Docket No. _____

IN THE

Supreme Court of the United States

STEPHEN MARTIN and SUSAN MARTIN,

Petitioners

v.

SANDERSON FARMS, INC., JAMES STUDENSKY, and FARMERS STATE BANK,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Certified Fed. R. App. P. 44(a) and (b) challenges that raise a single question are presented:

Whether 28 U.S.C. §§151, 157, 1334 (made bankruptcy courts units of the Federal District Courts); the Federal Arbitration Act (FAA) and the Texas General Arbitration Act (TGAA); and Article V of the Texas Constitution – are all similarly unconstitutional in that Congress lacks constitutional authority to confer Article III powers on judges who lack the life tenure and salary security of Article III judges.

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B. The lower court decisions in this case contradict this Court's precedent in *Marathon* (1982) and cite pre-*Marathon* common bankruptcy law (in *Jackson Brewing* (5th Cir. 1980)) as the legal basis for their decisions.

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A. Opinion of The United States Court of Appeals for the Fifth Circuit – dated/filed February 14, 2007 *
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C. Bankruptcy order granting Chapter 7 Trustee's motion to compromise controversy with Farmers State Bank pursuant to Bankruptcy Rule 9019 – with findings of fact and conclusions of law – dated/filed November 18, 2004 **
D. Order of the 20th Judicial District Court of Milam County, Texas granting plea in abatement/motion to compel arbitration, dated/filed August 23, 2002

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* This opinion remarks concerning filing fees. Appellants paid 4 separate filing fees to the 5th Circuit, which rendered a single opinion for 05-50440 and "members" 05-50736, 05-50800, 06-50546. As is customary procedure, fees for the 5th Circuit (after it denied Appellants' IFP motion) were collected in its behalf by the district court and payment is on record in the district court docket. Original bankruptcy petition and subsequent appeal fees required for district court review were collected in its behalf by the bankruptcy court and are on record in the bankruptcy docket.

** The Rule 9019 district court opinion and bankruptcy order (B and C above) cite an incorrect date for *Jackson Brewing* – which was a pre-*Marathon* 5th Circuit opinion based on 28 U.S.C. §1471 (rendered unconstitutional in *Marathon*).

E. Order of the 20th Judicial District Court of Milam County, Texas granting Plaintiffs' (the Martins') motion for non-suit – dated/filed March 18, 2003
F. Order of the United States District Court for the Western District of Texas – Denying Appellants' motion to remove the case from the bankruptcy court pursuant to 28 U.S.C. § 157(d) – dated April 23, 2005, filed April 25, 2005
G. Order of the United States District Court for the Western District of Texas – Granting Trustee's Motion To Dismiss Appeal By Stephen Martin and Susan Martin of Interim Order On Chapter 7 Trustee's Motion To Compromise and Settle Controversy With Sanderson Farms, Inc. Pursuant To Rule 9019 – dated/filed March 7, 2005
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The decision of the United States Court of Appeals for the Fifth Circuit is not yet reported in the Federal Register, but is recorded at 2007 WL 509525 and is also reproduced in the Appendix at 1*a*. The opinions and orders of the district court, bankruptcy court, and state court are unreported, but are reproduced in the Appendix as listed in page *iii* of this Petition.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The Fifth Circuit's opinion was rendered on February 14, 2007. Pet. App. 1*a*.
Additionally, the constitutionality of an act of the U.S. Congress and an alteration to the Texas Constitution have been called into question and 28 U. S. C. §2403(a) may apply. The U.S. Fifth Circuit Court of Appeals certified these facts to the U.S. Attorney General. Notification required by Rule 29.4(b) has been made. The constitutionality of a Texas statute has been called into question and 28 U. S. C. §2403(b) may apply. The U.S. Fifth Circuit Court of Appeals certified this fact to the Texas Attorney General. Notification required by Rule 29.4(c) has been made.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U. S. Constitution, Article III, provides in part:

> Section 1. The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may

from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

Section 2. The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

The U.S. Constitution, Amendment I provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

> peaceably to assemble, and to petition the government for a redress of grievances.

The U.S. Constitution, Amendment V provides in part:

> No person shall be .... deprived of life, liberty, or property, without due process of law.

The U.S. Constitution, Amendment VII provides in part:

> In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.

The U.S. Constitution, Amendment XIV (§ 1) provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Texas Constitution, Article I, § 1 provides in part:

> That the general, great and essential principles of liberty and free government may be recognized and established, we declare: Texas is a free and independent State, subject only to the Constitution of the United States.

The Texas Constitution, Article I, § 13 provides in part:

> All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law.

The Texas Constitution, Article I, § 15 provides in part:

> The right of trial by jury shall remain inviolate.

The 1869 Texas Constitution, Article V, § 2 and § 6 provided in part:

> SECTION II. The Supreme Court shall consist of three Judges, any two of whom shall constitute a quorum. They shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of nine years.
>
> SECTION VI. The State shall be divided into convenient Judicial Districts, for each of which one Judge shall be appointed by the Governor, by and with the advice and consent of the Senate, for a term of eight years, who shall after his appointment reside within the District, and shall hold a Court three times a year in each County thereof, at such time and place as may be prescribed by law; provided, that at the first general election after the 4th of July, 1876, the question shall be put to the people, whether the mode of election of Judges of the Supreme and District Courts shall not be returned to.

The current Texas Constitution, Article V, § 2(c) provides:

> Said Justices shall be elected (three of them each two years) by the qualified voters of the state at a general election; shall hold their offices six years; and shall each receive such compensation as shall be provided by law.

28 U.S.C. § 151 provides:

> In each judicial district, the bankruptcy judges *in regular active service shall constitute a unit of* the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

28 U.S.C. § 157(d) provides:

> (d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

28 U.S.C. § 1332(a) provides in part:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between— (1) citizens of different States

28 U.S.C. § 1334 provides in part:

> (a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.
> (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

28 U.S.C. §1471 (1976 ed., supp. IV) provided in part:

> [t]he bankruptcy court for the district in which a case under title 11 is commenced shall exercise all of the jurisdiction conferred by this section on the district courts.

28 U.S.C. §2403(a) provides:

> In any action, suit or proceeding in a court of the United States to which the United States or any agency, officer or employee thereof is not a party, wherein the constitutionality of any Act of Congress affecting the public interest is drawn in question, the court shall certify such fact to the Attorney General, and shall permit the United States to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The United States shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

28 U.S.C. §2403(b) provides:

> In any action, suit, or proceeding in a court of the United States to which a State or any agency, officer, or employee thereof is not a party, wherein the constitutionality of any statute of that State affecting the public interest is drawn in question, the court shall certify such fact to the attorney general of the State, and shall permit the State to intervene for presentation of evidence, if evidence is otherwise admissible in the case, and for argument on the question of constitutionality. The State shall, subject to the applicable provisions of law, have all the rights of a party and be subject to all liabilities of a party as to court costs to the extent necessary for a proper presentation of the facts and law relating to the question of constitutionality.

Texas General Arbitration Act (Tex. Civ. Prac. Rem. Code, Title 7, Ch. 171) provides in part: § 171.002.

> (a) This chapter does not apply to:
>
> (1) a collective bargaining agreement between an employer and a labor union;
>
> (2) an agreement for the acquisition by one or more individuals of property, services, money, or credit in which the total consideration to be furnished by the individual is not more than $50,000, except as provided by Subsection (b);
>
> (3) a claim for personal injury, except as provided by Subsection (c);
>
> (4) a claim for workers' compensation benefits; or
>
> (5) an agreement made before January 1, 1966.
>
> (b) An agreement described by Subsection (a)(2) is subject to this chapter if:

(1) the parties to the agreement agree in writing to arbitrate; and

(2) the agreement is signed by each party and each party's attorney.

(c) A claim described by Subsection (a)(3) is subject to this chapter if:

(1) each party to the claim, on the advice of counsel, agrees in writing to arbitrate; and

(2) the agreement is signed by each party and each party's attorney.

Title 9, Chapter 1 of U.S.C. (the Federal Arbitration Act) provides in part:

CHAPTER 1--GENERAL PROVISIONS

Sec. 1 "Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

> Sec. 5. Appointment of arbitrators or umpire
> If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

Fed. R. App. Proc. 44(A) and (B) provide:

> **(a) Constitutional Challenge to Federal Statute.** If a party questions the constitutionality of an Act of Congress in a proceeding in which the United States or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the Attorney General.

> **(b) Constitutional Challenge to State Statute.** If a party questions the constitutionality of a statute of a State in a proceeding in which that State or its agency, officer, or employee is not a party in an official capacity, the questioning party must give written notice to the circuit clerk immediately upon the filing of the record or as soon as the question is raised in the court of appeals. The clerk must then certify that fact to the attorney general of the State.

The Fed. R. Bankr. Proc., Rule 9019 (essentially the same as former Rule 919) – amended in 1991[1] provides:

> (a) **Compromise.** On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct.
>
> (b) **Authority to compromise or settle controversies within classes.** After a hearing on such notice as the court may direct, the court

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[1]This rule is amended to enable the United States trustee to object or otherwise be heard in connection with a proposed compromise or settlement and otherwise to monitor the progress of the case.

may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

(c) Arbitration. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

STATEMENT OF THE CASE

For almost five years, Susan Martin and Stephen Martin, Petitioners, have been repeatedly denied access to Article III courts. Everywhere the Martins have turned, non-Article III judges – who lack the life tenure and salary security of Article III judges, but have been empowered with or exercise Article III authority – have applied legislation and rules designed to circumvent the civil jury right of the individual citizen.

This case is a precedent-setting example of why this Court's reasoning and decision in *Marathon* (1982) must be likewise applied to: 1) Texas state judges (empowered by constitutional amendment that contradicts the U.S. Constitution); 2) arbitrator judges (empowered by arbitration legislation designed to circumvent or abridge the jury right of the individual citizen); and 3) bankruptcy judges (remain empowered and unfettered in the wake of *Marathon*.)

I. Case Background in Texas State District Court.

Petitioners Susan Martin and Stephen Martin are non-attorney United States citizens residing in Texas. In July 2002, the Martins filed suit against Sanderson

Farms, Inc. (SFI) and Farmers State Bank (the Bank). The state judge denied Susan Martin's jury request that had been made jointly with her husband and ordered her to arbitrate her causes of action against Sanderson Farms, Inc. (SFI) using American Arbitration Association (AAA) arbitrators. The causes were related to a 1999 labor Agreement that was between only Susan Martin and SFI. All of the Martins' causes of action that were related to the separate 1998 pre-construction investment contract (which involved all four parties) were stayed pending an AAA decision.

Four months after having received several thousand dollars in application fees, the AAA sent Susan Martin a $22,500 fee estimate as her half of the fee for a future 2-day hearing and the Martin's attorney withdrew. The AAA expressly refused to waive the unaffordable fees (citing lack of authority to waive arbitrators' judicial compensation) and dropped the application. No access was available to Federal Courts because at least one Defendant was a Texas resident.[2] With access to justice frustrated and their jury right circumvented by arbitration law, the Martins were unable to litigate the potential causes of action and filed a non-suit motion – which the state judge granted on March 18, 2003. [3]

II. Case Background in Bankruptcy Court

On July 14, 2003, the Martins filed chapter 7 bankruptcy. The record shows the Trustee knew debt financed by the Bank was not delinquent and that the Bank continued post-petition to accept money toward a

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[2] 28 U.S.C. §1332(a)(1) "*Diversity Legislation*" applied.

[3] The 5th Circuit record had a full copy of the original signed and file-stamped order, but the opinion misstates the date of the nonsuit order to be November 18, 2003 instead of March 18, 2003. See Pet. App. 31*a*

future annual 2005 payment; however, the Bank filed a motion to lift the stay – which was granted without scheduling a hearing date after the Trustee failed to object. Regardless, the order only granted the Bank permission to take necessary *legal* actions. A discharge order was granted to the Debtors on October 27, 2003; however, SFI then prematurely removed the annual flock from the poultry barns on the Martins' homestead and the Bank accelerated the non-delinquent Federally Guaranteed debt – taking the Martins' entire farm, barn equipment, and homestead in a non-judicial proceeding.

Almost a year later, Studensky (as Trustee of the former bankruptcy estate) agreed to accept $5,000 from the Bank in exchange for an order titled "*Compromise of the Controversy With Farmer's State Bank of Center, Texas, Pursuant To Bankruptcy Rule 9019*". The Martins filed an objection – citing Supreme Court precedent and arguing that there was no mature "*controversy*" to adjudicate because no adversarial proceeding was on file against either the Bank or SFI. In response, the bankruptcy judge called a hearing attended by all parties to this case and opened up the state court's nonsuit order[4] and added the Bank and Stephen Martin as parties to the state court's 2002 arbitration order.[5] The judge then granted Studensky's motion, and the Martins appealed.

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[4] The nonsuit order was one of many of the Martins' exhibits admitted into the bankruptcy record. The exhibit was submitted to show that absent an adversary proceeding, there was no mature "*controversy*", and absent the potential causes of action (which had been nonsuited), there was nothing to "*compromise*".

[5] Just prior to entry of the bankruptcy rule 9019 order granted to benefit the Bank, SFI submitted exhibits related to the attempted arbitration including a copy of a 1999 labor Agreement.

III. Case Background in District Court

The Appellants' primary designated appeal issue questioned the Bankruptcy Court's authority to compromise an imaginary controversy and transfer potential causes of action (i.e. the civil right of the individual to develop and litigate potential causes) against a former creditor – to that creditor – under the guise of a "*Bankruptcy Rule 9019 Compromise of the Controversy*". The Appellants argued on appeal that the bankruptcy judge lacked jurisdictional authority to transfer, sell, or adjudicate non-estate property including private causes of action.

Since the bankruptcy judge opened up and expanded the state court's orders, the Martins included SFI as a party to the appeal and invoked 28 U.S.C. § 157(d) in the District Court for removal of the case from the bankruptcy judge and to allow them to develop the causes of action into a mature controversy and exercise the jury right; however, that motion was subsequently denied, appealed, and docketed by the Fifth Circuit as a "member" appeal to 05-50440.[6] Also, narrow Title 11 appellate rules offer no remedy to allow Appellants to invoke a constitutional challenge while in the District Court, so the Appellants waited until the Federal Rules of Appellate Procedure became available in the Fifth Circuit before invoking Fed. R. App. P. 44(a) and (b) and raising the constitutional challenges.[7]

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[6] Petitioners paid 4 separate filing fees to the 5th Circuit, which rendered a single opinion for 05-50440 and "members" 05-50736, 05-50800, 06-50546

[7] The 5th Circuit opinion states they will not consider any issues not raised before the bankruptcy court, but the opinion fails to cite statute or constitution requiring constitutional challenges to be raised before a non-Article III judge.

The initial Fifth Circuit appeal (docketed as 05-50440, on March 18, 2005) resulted when nine weeks into the appeal (on February 2, 2005) the bankruptcy judge issued an "interim" order to "*clarify the current situation*", citing Tex. Prop. Code §42.002 as authority that causes of action are non-exemptible tangible assets owned by the estate. The order also announced intent to grant a duplicate "*Rule 9019 Compromise of the Controversy*" order accepting $5,000 from SFI. Appellants moved the district court to void the order for lack of bankruptcy authority/jurisdiction, and appealed the "interim" order to the district court due to the narrow time frame allowed for filing a notice of appeal.

On March 7, 2005 the District Court "Ordered that the appeal by Stephen Martin and Susan Martin of Interim Order on Chapter 7 Trustee's Motion to Compromise and settle Controversy with Sanderson Farms, Inc. Pursuant to Rule 9019 is hereby dismissed." The order additionally stated, "Ordered that the Bankruptcy Court may proceed with a hearing on Trustee's Motion to Compromise Controversy with Sanderson Farms, Inc."[8]

The Appellants appealed the foregoing district court dismissal (of the appeal of the "interim" order) to the Fifth Circuit. When the district court filed subsequent related orders (April 25, 2005, denying Appellants' motion to withdraw the reference of the

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[8] When the Martins filed a bankruptcy petition (July 14, 2003), scheduled the potential causes of action and Non-suit Order, and paid the filing fee, they did so because they believed in the "*liberty and justice for all*" promise that the case would finally be reviewed by an Article III Court; instead, they were caught in a pattern established by district courts that withholds Article III access and 1st Amendment petition rights from the bankrupt and the poor.

case from the bankruptcy court, and denying the appeal of the Rule 9019 "compromise of the controversy" with the Bank order), the Appellants designated new issues (related to the district order including the denial of the reference motion) and redesignated all other issues already on appeal.[9]

IV. Case Background in Fifth Circuit

The Fifth Circuit's opinion was given without oral argument. The Appellants invoked Fed. R. App. Proc. 44(a) and (b), and the Fifth Circuit certified the questions; however, even though the Appellants argued the questions in their original and reply briefs, the Fifth Circuit's opinion fails to address the Article III issue present in the certified questions.

On appeal to the Fifth Circuit, Appellants continued questioning the bankruptcy judge's authority to compromise an imaginary controversy and adjudicate or transfer private potential causes of action under the guise of a "*Bankruptcy Rule 9019 Compromise of the Controversy*"; however; notably, the Fifth Circuit's opinion never once uses the word "*controversy*" or "Rule 9019" – yet affirmed orders where authority to grant Rule 9019 motions was invoked and where both the original motion and order were titled "*compromise of the controversy*".

The Appellants also continued to argue that the bankruptcy judge lacks jurisdiction over non-estate property and that private causes of action are not bankruptcy estate property. The Fifth Circuit cited two common law Fifth Circuit cases to base the ownership

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[9] The standard of review used by the district court for the appeal of the Rule 9019 orders from its adjunct was not *de novo*.

of causes of action on whether the causes arose "pre-petition" or "post-petition". The opinion cites the exact same pre- *Marathon* common law decision (*Jackson Brewing*, 5th Cir. 1980) that was also cited by the bankruptcy and district court. No statute or constitution was cited in the opinion to warrant the common law practice of stripping private causes of action from a U.S. citizen if they file bankruptcy, and then deny the 7th Amendment jury right and 1st Amendment right to petition an Article III court for relief.

REASONS FOR GRANTING THE WRIT

A. The constitutional and statutory provisions questioned mightily contradict Article III of the U.S. Constitution and Supreme Court precedent established in *Marbury v. Madison* (1803), *McCulloch v. Maryland* (1819), and *Marathon* (1982).

28 U.S.C. §§151, 157, 1334 (made bankruptcy courts "units" of the Federal District Courts); the Federal Arbitration Act (FAA) and the Texas General Arbitration Act (TGAA); and Article V of the Texas Constitution – are all similarly unconstitutional in that Congress lacks constitutional authority to confer Article III powers on judges who lack the life tenure and salary security of Article III judges. Since the Petitioners' five year case history of their journey (with their constitutional rights being abridged at every turn in the road by non-Article III judges empowered with Article III powers either by state constitution or by Congress) began in the Texas state district court – that is where this argument must begin.

Article V of the Texas Constitution

In this instant case, Article V of the Texas constitution empowered a non-life tenured district judge with authority to adjudicate private civil causes of action, to apply law affecting Susan Martin's civil jury right, and to refer Susan Martin's labor-related causes of action against SFI to arbitrator judges – where those arbitrator judges hold influence over the continuance of the position held by the Texas judge.

Clearly, Texas District and Supreme judges are elected "political" judges empowered under Article V of the Texas Constitution to exercise the full realm of judicial powers reserved only for judges with life-tenure and salary protection. TEX. CONST. art.V. Applying the same reasoning exercised by this Court in *Marathon*,

> "this grant empowers [non-Article III] courts to entertain a wide variety of cases ...[including] ...causes of action. In addition to this broad grant of powers, Congress has allowed [non-Article III] judges the power to hold jury trials." *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982)

As non-life tenured judges, Texas judges are easily influenced by the other two branches of government and other judges. Texas judges rely on partisan campaign funds to gain and then to keep their judicial position and salary, and could easily be removed from their judicial position by the will of powerful party campaign contributors.

> "The Federalist Papers stressed the need for lifetime tenure and salary protection for judges.

'In the general course of human nature, a power over a man's subsistence amounts to a power over his will'. The Federalist No. 79, at 472 (Alexander Hamilton). The Framers guarded against this danger in Article III of the Constitution." *In re Clay*, 35 F.3d 190 (5th Cir. 1994);* "A Judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government." *United States v. Will*, 449 U.S. 200, 217-218 (1980). The Texas Constitution is "subject to the United States Constitution." TEX. CONST. art. I, § 1. The United States Constitution vests "the judicial power of the United States" only in judges with life tenure and salary security. U.S. CONST. art. III; "The U.S. Constitution and the laws made in pursuance thereof are supreme; they control the constitution and laws of the respective states and cannot be controlled by them." *McCulloch v. Maryland*, 17 U.S. 316 (1819).

The Federal Arbitration Act/Texas General Arbitration Act

The U.S. Congress lacked constitutional authority to enact the FAA – which confers non-Article III courts and judges with authority to adjudicate common law causes of action without a jury where the value in controversy exceeds $20. The history of this case shows that after waiving her jury right in a pre-dispute arbitration agreement, the unaffordable arbitrator fees demanded from Susan Martin were more than $22,500 and she was left with no legal way or remedy to retract the automatic jury waiver legislated by Congress in the Federal Arbitration Act. Not even the bankruptcy Trustee, James Studensky (Respondent) could afford to

pay those fees when the bankruptcy court opened the state-ordered nonsuit. (See Pet. App. 20a).

Notwithstanding the fact that the FAA contradicts Article III and abridges both the First and Seventh Amendments to the U.S. Constitution,[10] the problem is that Congress not only failed to enact legislation limiting arbitrator compensation amounts, but also Congress failed to enact legislation governing the proper time for parties to make a valid arbitration agreement.[11]

Additionally, only judges who enjoy life tenure and protection against salary cuts can exercise the "*judicial power of the United States*". *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 59 (1982) (Brennan, J., plurality opinion). The Supreme Court has carved out only three exceptions for non-Article III courts and judges: 1) judges for the District of Columbia and U.S. territories; 2) judges for the courts-martial; 3) judges that hear cases involving public rights. FAA judges fail to meet any of these three exceptions. Regardless of whether a case involves territories, public rights, or the military, an Article III court may employ non-Article III judges; however, FAA judges are not employees of an Article III court

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[10] "Where rights secured by the constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 U.S. 436 (1966); "All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." TEX. CONST., art. I § 13; "The right of trial by jury shall remain inviolate." TEX. CONST., art. I § 15.

[11] The Texas General Arbitration Act does make some mention that an arbitration agreement may be formed when a dispute arises; however, the fact remains that arbitrators are non-Article III judges.

and have no Article III supervision. The FAA empowers judges with authority as broad as Article III judges. The only exceptions to the operation an FAA court's jurisdiction are contracts involving seamen and workers engaged in interstate or foreign commerce.

> "Nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." Title 9, Chapter 1 of U.S.C. (the Federal Arbitration Act). The First Amendment to the U.S. Constitution states that "Congress shall make no law ... abridging... the right of the people to petition the government [including Article III courts] for redress of grievances". The FAA abridges that right. "An act of the legislature, repugnant to the constitution, is void". *Marbury v. Madison*, 5 U.S. 137 (1803). "Where a case gives rise to a Seventh Amendment right to a jury trial, Congress may not give jurisdiction to a non-Article III court." *In re Clay*, 35 F.3d 190 (5th Cir. 1994).[12]

28 U.S.C. §§151, 157, 1334

28 U.S.C. §§151, 157, 1334 made bankruptcy courts "units" of the Federal District Courts; however, district courts continue to automatically refer petitions to the bankruptcy courts where those "adjuncts" remain unfettered in exercising full Article III powers in the wake of *Marathon*. Bankruptcy judges are obviously

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[12] Regarding *Clay* – like the instant case, *Clay* originated in the Bankruptcy Court for the Western District of Texas where a husband and wife were denied access to the district court to exercise their jury right.

not being delegated "adjunct" responsibilities by the district courts. Part of the problem is that Congress failed to withdraw its broad grant of jurisdictional powers to bankruptcy courts over the "*causes of action owned by the debtor at the time of the petition for bankruptcy*" – which was specifically listed by this Court in *Marathon* to be one of the many reasons that 28 U.S.C. § 1471 (1976 ed., Supp. IV) was decided to be unconstitutional.

> See *Marathon Pipe Line Co.*, 458 U.S. 50, 55 (1982) and page 87, "We conclude that 28 U.S.C. § 1471 (1976 ed., Supp. IV), as added by § 241(a) of the Bankruptcy Act of 1978, has impermissibly removed most, if not all, of 'the essential attributes of judicial power' from the Art. III district court, and has vested those attributes in a non-Art. III adjunct. Such a grant of jurisdiction cannot be sustained as an exercise of Congress' power to create adjuncts to Art. III courts."

Congress (after being given a directive from this Court to withdraw the grant of jurisdictional authority over all specific items enumerated by this Court in *Marathon*) enacted 28 U.S.C. §§151, 157, 1334, but failed to create new legislation itemizing the specific *Marathon* items over which the new bankruptcy "units" lack jurisdiction.

B. The lower court decisions in this case contradict this Court's precedent in *Marathon* (1982) and cite pre-*Marathon* common bankruptcy law (in *Jackson Brewing* (5th Cir. 1980)) as the legal basis for their decisions.

The lower appellate courts contradict this Court's *Marathon* holding – that a *de novo* review standard must be utilized when reviewing a bankruptcy court's findings.

> "In *United States v. Raddatz,* 447 U.S. 667 (1980) the Court ...observed that the magistrate's proposed findings and recommendations were subject to *de novo* review by the district court...Under these circumstances, the Court held that the Act did not violate the constraints of Art. III. *Id.* at 683-684." *Marathon,* pg.79;

However, in this instant case, both the district court and the Fifth Circuit failed to do a *de novo* review of the bankruptcy court's Order to "Compromise the Controversy With Farmers State Bank of Center, Texas, Pursuant to Bankruptcy Rule 9019".

> See Pet. App. 1a, "When reviewing the approval of a motion to compromise, this court reviews for abuse of discretion. *In re Aweco, Inc.,* 725 F.2d 293, 297 (5th Cir. 1984); *In re Jackson Brewing Co.* , 624 F.2d 599, 602-03 (5th Cir. 1980) and Pet. App.10a, "When reviewing a bankruptcy court decision, the district court utilizes the same standard of review generally applied by a federal court of appeals. *Webb v. reserve Life Ins. Co. (In re Webb)*, 954 F. 2d 1102, 1103-1104 (5th Cir. 1992). The bankruptcy court's factual findings are accepted as true unless clearly erroneous."

Additionally, the bankruptcy court's Rule 9019 orders being appealed assert ownership and authority over Petitioners' causes of action (over Petitioners' repeated argument to the contrary) and contradict this Court's *Marathon* ruling that such a "broad grant of jurisdiction" to bankruptcy courts is unconstitutional.

> "This jurisdictional grant [in 28 U.S.C. § 1471(b) (1976 ed., Supp. IV)] empowers bankruptcy courts to entertain a wide variety of cases involving claims that may affect the property of the estate once a petition has been filed under Title 11. Included within the bankruptcy courts' jurisdiction are suits to recover accounts, controversies involving exempt property, actions to avoid transfers and payments as preferences or fraudulent conveyances, and causes of action owned by the debtor at the time of the petition for bankruptcy. The bankruptcy courts can hear claims based on state law as well as those based on federal law." *Marathon,* pg.54

When the bankruptcy judge entered its "Interim" Rule 9019 order of February 2, 2005 "*to clarify the current situation*" nine weeks into the appeal, it again referred to the debtors' scheduled potential causes of action and asserted its ownership and intent to "compromise" all "pre-petition and post-petition" causes of action for an additional $5,000 in a separate Rule 9019 order. (See Pet. App. 36a.). The district court cites *Jackson Brewing* (5th Cir.1990)[13]factors to be used

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[13] The district court opinion misstated the Jackson date to be 1990 instead of 1980.

by a bankruptcy court when making a compromise. The district court remained silent on the argument that the bankruptcy judge lacked jurisdictional authority.

> (See Pet. App. 10a) "The record establishes that Judge Kelly carefully applied the required Jackson factors in determining whether the compromise should be approved. See In re Jackson Brewing Co., 624 F. 2d 599 (5th Cir. 1990)."

Regardless, this Court's 1982 *Marathon* decision plainly overrules the Fifth Circuit's 1980 *Jackson Brewing* decision, which obviously relied on the unconstitutional 28 U.S.C. § 1471 (1976). (Ruled unconstitutional in *Marathon*)

C. The Fifth Circuit's unwillingness to review the District Court's denial of Petitioners' 28 U.S.C. § 157(d) motion (requesting removal of the case from the bankruptcy court) leaves Petitioner with no remedy and abridges Petitioners' access to an Article III court and jury right.

The Fifth Circuit declined to review the appeal of this district court order in an all inclusive statement without citing 28 U.S.C. § 157(d) at any point in the opinion. "We will not consider any issues on appeal that were not raised in the bankruptcy court." The Fifth Circuit failed to cite any statute or constitution that would require any citizen to raise such a motion as an issue in a non-Article III court. A district court is required to retain authority over the bankruptcy court – not the other way around.

> "In *United States v. Raddatz, supra,* ...it was noted that the magistrate considered motions only upon reference from the district court." *Marathon,* pg 79. "The bankruptcy court functions as an adjunct of the district court and, indeed, the constitutionality of the bankruptcy court's jurisdiction rests on that fact and on the careful supervision that the district court is bound to provide over the bankruptcy court". *In re Hester* 899 F.2d 361, 367 (5th Cir. 1990).

Petitioners moved the district court to remove its automatic reference of the case from the bankruptcy court to finally be able to exercise the jury right in an Article III court. The only Article III trial court available to U.S. citizens living in Texas is the Federal District Court. Authority to conduct jury trials is an essential attribute of an Article III court.

> "The Marathon plurality expressly deemed authority to conduct jury trials an "essential attribute of judicial power." *Marathon*, 458 U.S. at 85; *see also In re Clay*, 35 F.3d 190, 192 (5th Cir. 1994) ("authority to conduct a jury trial is an essential attribute" of judicial power). Indeed, the Fifth Circuit has gone so far as to state (albeit in *dictum*) that the "inadequacy of district court review of jury trials is fatal to delegation to adjuncts." *In re Clay*, 35 F.3d at 193. In so concluding, the Fifth Circuit presumed that, under *Marathon*, "adjuncts" must be subject to "adequate" (apparently *de novo*) appellate review. It then reasoned that *de novo* review of jury findings is impossible, both because the Seventh Amendment prohibits it

and because *de novo* review of jury findings is impractical. *Id.* at 193-94. *See generally*, Mitchell Hall, "*Granfinanciera, Northern Pipeline*, and 'Public Rights': May a Bankruptcy Judge Presides Over a Jury Trial?" 80 Ky. L.J. 499, 530 (1992) (concluding that Congress may not constitutionally permit bankruptcy judges to conduct jury trials)." Report of the United States Department of Justice Bankruptcy Working Group, Appendix F-2 (Sept. 1996)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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May, 2007

APPENDIX A – OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT – DATED/FILED FEBRUARY 14, 2007

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 05-50440

In the Matter of:
STEPHEN CLYDE MARTIN
and SUSAN GAYLE MARTIN, Debtors

STEPHEN CLYDE MARTIN,
SUSAN GAYLE MARTIN,

v.

SANDERSON FARMS, INC.;
FARMERS STATE BANK;
JAMES STUDENSKY, Chapter 7 Trustee

Appeals from the United States District Court for the
Western District of Texas
(No. 6:05-CA-7)

(February 14, 2007)

Before DAVIS and STEWART, Circuit Judges, and GODBEY, District Judge. *

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* District Judge for the Northern District of Texas, sitting by designation.

Appendix A

PER CURIAM: **

Debtors appeal pro se from multiple orders of the bankruptcy court. We dismiss many of the Appellants' claims on procedural grounds and affirm the district court.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 14, 2003, Steven Martin and Susan Martin filed for voluntary Chapter 7 bankruptcy. On the same day, they filed their schedules of assets and liabilities. The schedule of assets included a potential cause of action against Sanderson Farms, Inc. ("Sanderson") and/or Farmers State Bank ("Farmers State"), valued at $0. This potential cause of action arose from a series of agreements between Sanderson and Farmers State for the Martins to construct egg hatching barns for Sanderson with financing from Farmers State and for Susan Martin to work as a hatching egg producer. The Martins alleged fraud, deceptive trade, breach of contract, and other causes of action in a suit against Sanderson and Farmers State filed in Texas in 2002; the case was non-suited on November 18, 2003, because of the presence of a mandatory arbitration clause in the contracts between Sanderson, Farmers State, and the Martins. The Martins did not pursue arbitration to completion. The bankruptcy court lifted the automatic stay against Farmers State, a creditor of the Martins, on September 3, 2003.

The Trustee, James Studensky, objected to the schedules, and on September 23, 2003, the Martins

** Pursuant to 5th Cir. R. 47.5, the Court has determined that this opinion should not be published except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

filed an amended schedule that listed the potential cause of action as having an unknown value. The Martins did not attempt to exempt the cause of action in either their initial or amended schedule.

The bankruptcy court granted the Martins a discharge on October 27, 2003. In September 2004, the Trustee filed a motion in bankruptcy court to compromise the Martins's claims against Farmers State Bank. The Martins objected to this motion and filed several of their own motions, including a motion to avoid fraudulent transfer, a motion to declare themselves "persons aggrieved," a motion to avoid lifting the stay against Farmers State, and motions for fines and sanctions against Sanderson and Farmers State. The bankruptcy court, after conducting a fact-finding hearing, granted the Trustee's motion to compromise on November 18, 2004, specifically noting that none of the Martins's claims against Sanderson were effected by the order. The judge also denied all of the Martins's motions except for their motion to declare themselves persons aggrieved.

The Martins appealed these unfavorable determinations in a single notice of appeal to the district court. While the district court was considering the Martins's appeal, the Trustee filed a motion in district court to compromise the Martins's claims against Sanderson. On February 2, 2005, the bankruptcy court entered an interim order on the motion to compromise, setting a hearing date and a bidding deadline. The Martins then filed a notice of appeal of the interim order with the district court, amending their initial notice of appeal to include the interim order as well. The district court dismissed the

appeal of the interim order on the motion of the Trustee and directed the bankruptcy court to proceed with its consideration of the Trustee's motion. The Martins appealed the dismissal, commencing their appeal before this court on March 18, 2005. The district court then affirmed all of the orders entered by the bankruptcy court on November 18, 2005, adopting the factual findings of the bankruptcy court as well. The Martins then amended their notice of appeal with this court to include all of the motions that the district court upheld.

The Martins filed a motion in the district court, asking to be allowed to proceed in forma pauperis, which the district court denied. The Martins then filed a similar motion in this court, which was also denied.

The bankruptcy court, in the meantime, continued its consideration of the Trustee's motion to compromise the Martins's claims against Sanderson. The bankruptcy court approved the compromise on May 20, 2005. The debtors then filed a second amended notice of appeal with this court, adding the bankruptcy court's order approving the compromise with Sanderson. On May 27, 2005, Sanderson filed a timely motion in the bankruptcy court to vacate the May 20, 2007 order to correct a misstatement of fact under Fed. R. Civ. P. 59(e) and Bankruptcy Rule 9023. That motion is still pending in the bankruptcy court.

II. DISCUSSION

Generally, in a bankruptcy appeal, we apply the same standard of review to the bankruptcy court's decision as applied by the district court. *E.g., In re Amco Ins.* , 444 F.3d 690, 694 (5th Cir. 2006). Findings of fact are reviewed for clear error, and legal conclusions are reviewed de novo. *Id.* When reviewing the approval of

a motion to compromise, this court reviews for abuse of discretion. *In re Aweco, Inc.* , 725 F.2d 293, 297 (5th Cir. 1984); *In re Jackson Brewing Co.* , 624 F.2d 599, 602-03 (5th Cir. 1980). A bankruptcy court's lift of an automatic stay is also reviewed for abuse of discretion. *In re Chunn* , 106 F.3d 1239, 1242 (5th Cir. 1997).

A.

We must initially resolve, however, what issues are properly raised in this appeal. In bankruptcy appeals, appellants are required to file a statement of the issues to be presented in the appeal separate from the notice of appeal. Fed. R. Bankr. P. 8006. If an issue is not included in this statement, even if it was raised in and decided by the bankruptcy court, it is not preserved for appeal and is waived. *In re GGM, P.C.* , 165 F.3d 1026, 1032 (5th Cir. 1999). The Martins did not include any mention of their motions for fines and sanctions against Farmers Bank and Sanderson in their Fed. R. Bankr. P. 8006 notice; accordingly, they waived the right to appeal the bankruptcy court's denial of these motions.

Additionally, we will not consider any issues on appeal that were not raised before the bankruptcy court. *In re Ginther Trusts* , 238 F.3d 686, 689 & n.3 (5th Cir. 2001). The Martins raise many issues in their brief, including challenges to the composition of the chicken feed provided by Sanderson and the use of cell phones in courthouses, that were not decided by the bankruptcy court. We do not consider any of these issues in this appeal. All additional claims made by the Martins that are not separately considered below are dismissed because they were not raised before the bankruptcy court and/or they were not included in the debtors' Fed. R. Bankr. P. 8006 notice.

B. We also must consider our jurisdiction to hear this appeal. Our jurisdiction stems from 28 U.S.C. § 158(d), allowing us to review bankruptcy determinations of either a district court sitting as an appeals court or a bankruptcy appellate panel. We do not have jurisdiction over appeals from the bankruptcy court or district court when certain post-judgment motions have been filed, including timely motions to amend under Fed. R. Bankr. P. 9023. Fed. R. Bankr. P. 8002(b); *see also In re Transtexas Gas Corp.* , 303 F.3d 571, 579 (5th Cir. 2002). Therefore, we dismiss the Martins's appeal from the bankruptcy court's May 20, 2005 order to compromise the claims of Sanderson for lack of jurisdiction. The motion was never considered by either a district court sitting as an appeals court or a bankruptcy appellate panel, and the Martins did not seek leave to appeal under 28 U.S.C. § 158(a) and Fed. R. Bankr. P. 8003. Additionally, Sanderson filed a timely motion to amend the judgment, depriving any appellate court of jurisdiction under Fed. R. Bankr. P. 8002(b). [1]

We also dismiss the Martins's appeal from the denial of their motion to vacate the lift of the stay against Farmers State for being untimely. Any appeal of the bankruptcy court's lift of the stay must have been filed

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[1] We also dismiss the Martin's appeal from the February 2, 2005 order of the bankruptcy court setting a hearing on the Trustee's motion to compromise the claims against Sanderson because that appeal was not from a final order and that order is now moot in light of the bankruptcy court's May 20th order. Accordingly, the joint motion of the Trustee and Sanderson to dismiss the appeal of this order is granted.

within ten days in order to be timely. Fed. R. Bankr. P. 8002(a). The stay was lifted on September 3, 2003, and the Martins's did not request relief from this order until October 13, 2004, and did not file an appeal with the district court until November 29, 2004. Therefore, the Martins's motion was untimely, and the order lifting the stay had become final and unappealable.

We also dismiss as moot the Martins's appeal from the district court's denial of their motion to proceed in forma pauperis in this appeal. This court has already considered and denied that motion, and regardless, the appeal is now being considered on its merits despite any possible deficiencies in the payment of fees.

C.

The Martins's appeal the district court's determination that the bankruptcy court was correct that they did not have standing to file a motion to void fraudulent transfers. The Martins did not move to void the transfer under 11 U.S.C. § 522, which grants debtors limited rights to avoid certain liens on exempted property, an issue that is not raised here where the Martins did not exempt their causes of action against Farmers Bank and Sanderson. Instead, the Martins relied on 11 U.S.C. §§ 544, 547(b), 548(a), & 550, which by their terms apply to only the Trustee. While creditors may in some limited circumstances have the right to bring these actions, *see In re Dierschke* , 975 F.2d 181, 182 n.3 (5th Cir. 1992); *In re Natchez Corp. of W. Va.* , 953 F.2d 184, 187 (5th Cir. 1992) (holding that if a creditor seeks authorization from the bankruptcy court, there may be circumstances where a creditor is entitled to bring an action under 11 U.S.C. § 549); *see also In re Porras* , 312 B.R. 81, 94 (W.D. Tex. Bankr. 2004)

(holding that in some circumstances a fraudulent conveyance action may not "belong" to the estate exclusively), this case does not embody any of those circumstances. We affirm the determinations of the district court and the bankruptcy court on the Martins's motion to void fraudulent transfers.

Finally, we must consider the Martins's appeal from the motion to compromise the claims with Farmers State, approved by the bankruptcy court on November 18, 2004, and approved by the district court on appeal on April 25, 2005. Section 541 of the Bankruptcy Code creates, upon the filing of bankruptcy, an estate that consists of "all legal or equitable interests of the debtor in property as of the commencement of the case," including causes of action that belong to the debtor at the time the case is filed. *E.g., In re Swift* , 129 F.3d 792, 795 (5th Cir. 1995). The Martins included their possible causes of action against Farmers State and Sanderson on their schedules, and they did not attempt to exempt these causes of action.

When reviewing a bankruptcy court's approval of a compromise, the appellate court should "assure that [the] compromise is truly 'fair and equitable' and 'in the best interest of the estate.'" *In re Jackson Brewing Co.*, 624 F.2d 599, 602 (5th Cir. 1980) (quoting *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson* , 390 U.S. 414, 425 (1968) [hereinafter *TMT Trailer*]). This assurance comes from seeing that the bankruptcy judge was apprised of all the relevant facts to compare the possible rewards of litigation with the terms of the compromise. *Id.* The court should set forth its findings on "(1) the probability of success in the litigation . . .

(2) the complexity and likely duration of the litigation and any attendant expense, inconvenience, and delay, and (3) all other factors bearing on the wisdom of the compromise." *Id.* (citing *TMT Trailer*, 390 U.S. at 424-25). Having reviewed the bankruptcy court's order approving the compromise after conducting a fact-finding hearing, we find no abuse of discretion in his approval of the compromise of those claims that belonged to the estate. [2]

The Martins also challenge the compromise on the basis that it takes from them the right to file lawsuits against Farmers State Bank that might arise in the future. The motion to compromise seeks to settle claims "that the Bankruptcy Estate has against Farmers State Bank." The only claims belonging to the estate are those that had accrued at the time of the Martins's bankruptcy petition. *See, e.g., In re Educators Health Trust* , 25 F.3d 1281, 1284 (5th Cir. 1994) ("Whether a particular state cause of action belongs to the estate depends on whether under applicable . . . law the debtor could have raised the claim as of the commencement of the case."); *see also Swift* , 129 F.3d 792. We find no abuse of discretion in the lower courts' approval of the compromise.

III. CONCLUSION

We affirm the judgment of the district court. Additionally, we grant the joint motion of the Trustee and Sanderson to dismiss the appeal of the interim order and deny the joint motion of the Trustee and Farmers State to dismiss the appeal of the motion to compromise.

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[2] The joint motion by the Trustee and Farmers State Bank to dismiss this portion of the appeal is denied.

APPENDIX B – MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, WACO DIVISION – AFFIRMING BANKRUPTCY ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH FARMERS STATE BANK PURSUANT TO BANKRUPTCY RULE 9019.
DATED APRIL 23, 2005. FILED APRIL 25, 2005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

DOCKET NO. W-05-CA-007

In Re:
STEPHEN MARTIN and SUSAN MARTIN, Debtors

STEPHEN MARTIN and SUSAN MARTIN,
Appellants

v.

SANDERSON FARMS, INC., JAMES STUDENSKY, and FARMERS STATE BANK,
Appellees

MEMORANDUM OPINION AND ORDER

This is an appeal from a number of orders of the United States Bankruptcy Court for the Western District of Texas. Having thouroughly reviewed the record, the Court is persuaded the Bankruptcy Judge's

rulings should be affirmed. Appellants Stephen Martin and Susan Martin ("Martins" or "Debtors") appeal the following rulings of the bankruptcy Court:

1. Order Granting in Part and denying in Part Debtors' Motion to Declare That Debtors are Persons Aggrieved, and to Avoid Order Lifting Stay Against Farmers State Bank.
2. Order Granting Chapter 7 Trustee's Motion to Compromise and Settle Controversy with Farmers State Bank Pursuant to Bankruptcy Rule 9019
3. Order Denying Debtors' Motion to Avoid Fraudulent Transfers
4. Order Denying Debtors' Motion to Issue and Collect Fines Against Farmers State Bank
5. Order Denying Debtors' Motion to Issue and Collect Fines Against Sanderson Farms, Inc.

When reviewing a bankruptcy court decision, the district court utilizes the same standard of review generally applied by a federal court of appeals. Webb v. reserve Life Ins. Co. (In re Webb), 954 F. 2d 1102, 1103-1104 (5th Cir. 1992). The bankruptcy court's factual findings are accepted as true unless clearly erroneous, while conclusions of law are reviewed de novo. In re Foster Mortgage Corp., 68 F. 3d 914, 916 (5th Cir. 1995). Mixed questions of law and fact, and questions concerning the application of law to the facts, are also reviewed de novo. In re Bass, 171 F. 3d 1016, 1021 (5th Cir. 1999).

The Martins entered into a hatching egg producer contract with Sanderson Farms, Inc. ("SFI"). With financing from Farmer's State Bank ("FSB"), the Martins erected two chicken houses on their property,

which was connected to their homestead. FSB placed a lien on the non-homestead property to secure the loan. The Martins have included numerous exhibits which indicate they experienced numerous problems with SFI regarding the producer contract, which resulted in the Martins filing a suit in state court against both SFI and FSB. SFI moved to enforce the arbitration clause in the producer contract. Because the Martins were unable to pay the arbitration fee, they voluntarily dismissed the suit. In early 2003, Susan Martin requested a leave because a medical condition precluded her from maintaining the chickens as required by the contract. SFI informed the Martins that their producer payments would be reduced by the amount SFI was required to pay to continue caring for the chickens. On July 14, 2003, the Martins filed a voluntary petition under Chapter 7.

The real property which was subject to FSB's lien was valued by the Martins at $190,635, while $236,300 was owed to the Bank. The Martins did not list the property as exempt, and indicated in their Statement of Intention that they would "surrender" the property. A month after the Chapter 7 filing, FSB filed a motion to lift the automatic stay in order to proceed with foreclosure against the property. Neither the Martins nor the Trustee opposed the motion.

In their Schedule B, the Martins noted that they had a potential cause of action against SFI and/or FSB which they valued at $0.00. In an amended Schedule B, the Martins listed the value of the cause of action as "unknown".

The Trustee determined that the best course of action to resolve the potential cause of action, was to

reach a settlement. FSB agreed to pay $5,000 for a release of all claims and causes of action the estate might have against the Bank and its directors. Proper notice was given to all creditors, and the only objection was voiced by the Martins.

Although they have included a number of "issues" in their appeal, the Martins' central complaint is that the Bankruptcy Court erred in approving the Trustee's request to settle with FSB. They have, however, presented nothing to refute the Findings of Fact made by the Bankruptcy Court. Accordingly, those Facts are adopted.

The Martins have additionally made no compelling argument which would justify reversing the Bankruptcy Court's decision. The record establishes that Judge Kelly carefully applied the required Jackson factors in determining whether the compromise should be approved. See In re Jackson Brewing Co., 624 F. 2d 599 (5th Cir. 1990). It was clearly better for the creditors to have $5,000 added to the bankruptcy estate rather than to spend approximately $16,000 (at least) of the estate's money to pursue a lawsuit which had little (if any) chance of success.

As to the Martins other claims, Judge Kelly carefully and thoroughly explained the applicable bankruptcy laws at the hearing on November 3, 2004. As Judge Kelly noted, the Martins had no standing to attempt to avoid a "fraudulent" transfer and there was no authority for him to issue and/or collect a fine from SFI. Additionally, the Martins did not timely object to the lifting of the automatic stay requested by FSB. No contemporaneous objection was made to FSB's request to lift the stay; the Martins' motion was filed over a

year after the stay was lifted. Finally, the Martins had no standing to object to the foreclosure of the property because they did not list it as exempt.

Accordingly, the Bankruptcy Court's rulings are AFFIRMED. Any motions not previously ruled upon by this Court are denied.

IT IS SO ORDERED.
SIGNED this 23rd day of April, 2005.

s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
United States District Judge

APPENDIX C – ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TEXAS GRANTING CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH FARMERS STATE BANK, CENTER, TEXAS PURSUANT TO BANKRUPTCY RULE 9019 – WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

DATED AND FILED NOVEMBER 18, 2004

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS

Case No. 03-61633-LEK
Chapter 7 Petition

In Re: STEPHEN CLYDE MARTIN and
SUSAN GAYLE MARTIN, Debtors

ORDER GRANTING CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH FARMERS STATE BANK, CENTER, TEXAS PURSUANT TO BANKRUPTCY RULE 9019

Before the Court is the Trustee's Motion to Compromise and Settle Controversy with Farmers State Bank, Center, Texas ("Bank") Pursuant to Bankruptcy Rule 9019 filed September 9, 2004 (Doc.#41). The Debtors filed a Verified Objection and Motion to Deny the Compromise on September 29, 2004 (#43), and Supplemental Facts and Memorandum Supporting the

Appendix C

Objection and Motion to Deny on October 4, 2004 (#46). On November 3, 2004, the Court held a hearing on the motion to compromise and settle as well as the Debtors' objection thereto. At the hearing, the Chapter 7 Trustee James Studensky ("Trustee") appeared, the Debtors appeared pro se, and the Bank appeared through its counsel. The Court has entered findings of fact and conclusions of law pursuant to Bankruptcy Rules 9014 and 7052 and Federal Rule of Civil Procedure 52. Based upon those findings of fact and conclusions of law, it is therefore

ORDERED that the Trustee's Motion to Compromise and Settle Controversy with Farmers State Bank, Center, Texas Pursuant to Bankruptcy Rule 9019 is granted because the settlement proposed therein is in the best interest of the creditors of the estate, including those with timely-filed and untimely-filed claims, it is further

ORDERED that all objections asserted by the Debtors against the settlement are denied.

SO ORDERED.

SIGNED this 18 day of November, 2004.

s/ Larry E. Kelly
LARRY E. KELLY
UNITED STATES CHIEF BANKRUPTCY JUDGE

Appendix C

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH FARMERS STATE BANK, CENTER, TEXAS PURSUANT TO BANKRUPTCY RULE 9019

Before the Court is the Trustee's Motion to Compromise and Settle Controversy with Farmers State Bank, Center, Texas ("Bank") Pursuant to Bankruptcy Rule 9019 filed September 9, 2004 (Doc.#41). The Debtors filed a Verified Objection and Motion to Deny the Compromise on September 29, 2004 (Doc. #43), and Supplemental Facts and Memorandum Supporting the Objection and Motion to Deny on October 4, 2004 (Doc. #46). On November 3, 2004, the Court held a hearing on the motion to compromise and settle as well as the Debtors' objection thereto. At the hearing, the Chapter 7 Trustee James Studensky ("Trustee") appeared, the Debtors appeared pro se, and the Bank appeared through its counsel. The Trustee seeks to approve his negotiated compromise and settlement with the Bank pursuant to Bankruptcy Rule 9019 in which he, as representative of the Debtors' estate, will give a release of all claims and causes of action the estate has or may have against the Bank and its directors, officers, agents, and employees in return for the payment of $5,000 from the Bank[1].

[1]The Court notes that the Trustee's motion to compromise controversy specifically states that the subject settlement does not release any claims the estate may have against Sanderson Farms, Inc. or any other parties.

Appendix C

Proper notice was given to all creditors, and only the Debtors objected. The Trustee proffered his testimony to the Court while under oath. The Debtors provided a lengthy argument to the Court, along with exhibits. At the close of the hearing, the Court took the matter under advisement to more completely review the Debtors' schedules and other pleadings. After considering all of the evidence received at the hearing, as well as the pleadings on file, the following represents the Court's findings of fact and conclusions of law made in this contested matter pursuant to Bankruptcy Rules 9014 and 7052 and Federal Rule of Civil Procedure 52.

Background

These Debtors entered into a Hatching Egg Producer Contract with Sanderson Farms, Inc. ("SFI") about February 1998. At the hearing, the Debtors submitted an extensive set of documents, letters, transcripts of conversations, copies of news articles and similar paperwork relating to issues involving Sanderson Farms, which collectively were admitted as Debtors' Exhibits. These exhibits were admitted solely in relation to the Debtors' objection to the Trustee's Motion to Compromise and Settle Controversy. However, the issue presented by the Trustee's motion to compromise and settle involves claims against the Bank, not SFI.

Findings of Fact

1. The Debtors filed this voluntary chapter 7 on July 14, 2003.

2. The Debtors scheduled their primary real property as being 76.24 acres of land valued at $190,635 and being

subject to a lien in favor of the Bank in the amount of $236,300 (hereinafter the "Property").
3. In their Statement of Intention, the Debtors indicated that they would "surrender" this Property.
4. The Debtors did not claim this Property as exempt.
5. On August 7, 2003, the Bank filed a Motion for Relief from the Automatic Stay in order to proceed with foreclosure against the Property.
6. The Debtors did not oppose this motion.
7. The Trustee did not oppose this motion.
8. In Schedule B in answer to question #33, the Debtors indicated that they had a "potential cause of action against Sanderson Farms, Inc and/or Farmer's State Bank," which they valued as having a $0.00 value. See Schedule B of Petition, Answer to Question 33, filed July 14, 2004 (Doc. #2). In a later amended Schedule B, the Debtors listed the value of this asset as "unknown." See Amended Schedule B of Petition, Answer to Question 33, filed September 23, 2004 (Doc. #20).
9. The Trustee proffered as his testimony made under oath all of the efforts he made to discover and investigate the "claim" the Debtors allege exists against the Bank, as follows:
a. Investigation. The Trustee stated he did extensive investigation of the Debtors' alleged causes of action. He advises that he met with the debtors for at least 4 hours, he reviewed documents they left with him for another 2-3 hours, and he spent time discussing the issues on the telephone with the Debtors' prior bankruptcy attorney.
b. Duty to Creditors of the Estate. The Trustee stated he has a duty to all creditors of the estate, those with

timely-filed claims and those with untimely-filed claims, to maximize the monetary return to all creditors. He received $16,685.00 from Sanderson Farms, Inc. (SFI) as production income and bonus proceeds from the last flock of hens on the Debtors' farm. This amount will pay all timely-filed claims 100%.

c. Claims filed against the Estate. The Trustee stated his records show, to date, that there have been $51,141.56 in total claims filed against the estate, including timely-filed claims and untimely filed claims. This dollar amount includes the Trustee's fees and expenses.

d. Valuing a Cause of Action. The Trustee explained, in depth, how he values a cause of action, one of the hardest tasks he must do as a trustee because, should he decide to pursue a cause of action, he must use estate assets to do so, versus taking an offered monetary settlement that requires little expenditure of estate assets to obtain. He looks at the following factors to determine a value of a lawsuit: liability, damages, the ability to collect any award, and other intangibles, such as the proper forum for the lawsuit, any obstacles to be faced in pursuing the suit, and the credibility of the estate's witnesses.

e. Debtors' State Court Suit Against the Bank. The Trustee noted that the Debtors filed a prior lawsuit against the Bank and SFI in state court in Milam County, alleging claims of conspiracy to defraud, illegal inducement to enter the agreement, misrepresentation by the Bank and SFI regarding the cost of construction of the hen barns and the expenses involved in operating the chicken growing business, and DTPA claims. The state court ordered the parties to

arbitration through the American Arbitration Association based upon the arbitration clause, presumably in the producers agreement. Debtors non-suited the state court case and did not proceed with arbitration because they did not have the $22,500 fee required by the American Arbitration Association.

f. Procedural Hurdles to Overcome if Suit Brought. The Trustee stated that, if he was to pursue the Debtors' alleged causes of action, first, he would have to challenge the arbitration clause. Despite the fact that the Debtors argued their belief that the arbitration clause should be challenged because it was unilateral, the Trustee stated he talked with them at length regarding the difficulty of setting aside an arbitration clause, especially because a court had found it binding and had ordered the parties to abide by it. Additionally, the Trustee stated he does not have the $22,500 fee to proceed with arbitration. To the extent that he used any estate funds to pay such a fee, he would be using estate assets that would otherwise be paid to creditors to pursue a very difficult lawsuit.

g. The Alleged Causes of Action. The Trustee also discussed the causes of action alleged by the Debtors to exist against the Bank as follows:

(1). Fraud in the Inducement. The Debtors signed a producers contract with SFI under which they were "hatch egg producers." To finance their venture, Debtors obtained financing from the Bank and signed two assignments of income from SFI to the Bank. In the first assignment, they assigned 50% of their monthly income from SFI to the Bank, and in the second one, they assigned 60% of their monthly income from SFI to the Bank. Now, the Debtors believe that

these assignments are null and void and were fraudulently induced. However, the Trustee stated he can find no evidence of fraud or any other evidence to cast doubt on the agreements.

(2). The Producers Agreement. The Trustee stated he did not assume this contract. Not only is it likely a personal service contract, but he considers it was likely breached by the Debtors pre-petition when they quit the chicken growing operation. Also, the Trustee stated he has no experience raising chickens and could not subject the estate to liability for taking on such an operation. The Trustee discredits the Debtors' belief that they are entitled to the 15 years of production income under the producer's agreement whether they are farming or not because the agreement was to last 15 years. Instead, he believes any right to money terminated when the Debtors terminated their work of growing chickens.

(3). Foreclosure of the Farm. The Debtors valued the Property on which they operated the chicken operation on their schedules at $190,635 and listed the Bank as having a debt of $237,300. The Trustee questioned the Debtors about the condition of the Property and learned that there were chickens on the Property. He learned that the Property would have to be cleaned and that there might be environmental issues present. Thus, he faced a situation in which there was no equity value in the property, and he could incur clean up costs should he attempt to hold on to the Property. Instead, he considered the proper route was to not oppose the Bank's motion to lift stay. The Debtors' schedules did not claim this Property as exempt, the Debtors's Statement of Intention indicated that the Property

would be surrendered. Further, the Debtors did not oppose the Bank's motion for relief from the automatic stay.

(4). Irregularities in the Documents. The Debtors allege irregularities with the documents they signed with the Bank. However, given the Trustee's experience representing financial institutions, after he reviewed all the documents, he stated he could find no such alleged irregularities. Instead, he considered all of the documents appeared to be "regular" on their face. He could find no evidence of any fraudulent inducement by the Bank to cause the Debtors to enter into the agreements. Additionally, he asserted that the cause of action of fraud is difficult to prove, and here, he has no documents to support such a claim. The Property has been foreclosed, making it possible for the Bank to assert laches or waiver by the Debtors as defenses to a fraud claim. Also, the Trustee cannot determine the Debtors have suffered any damages, given the undersecured status of the Bank and the additional clean up costs that were likely to be required for the Property. Also, the Trustee asserts that the Debtors have no claim for fraud or irregularity in the documents by their assertion that the deed of trust covering the Property was not renewed and extended when the debt they owed the Bank was renewed and extended. The Trustee stated that case law is clear: a note can be renewed and extended without renewing and extending the securing deed of trust. The Trustee has tried a similar case to this situation but which had an additional, and more attenuating fact, of the presence of a third party presenting this claim, and which claim was unsuccessful. In this situation, the law is even stronger

against the Debtors' argument because the Debtors were parties to the transaction with the Bank; thus, the claim of invalidity of the debt and lien has even less merit when brought by one of the parties to the challenged transaction. Thus, the Trustee believes there is no wrongful foreclosure issue: there is no evidence to support any element of a wrongful foreclosure, and, even if the foreclosure was to be set aside, the Trustee would have a large debt owed to the Bank to resolve; a situation prejudicial to the other creditors of the estate.

(5). Mechanics and Materialman's Lien. The Trustee believes there is no claim, despite the Debtors' asserted belief, of the Bank's holding an improper mechanics and materialman's lien on more than 50 acres of the property. The Trustee stated that the Texas Property Code section cited by Debtors is not applicable here because that section governs a situation involving an involuntary lien affidavit being filed by someone claiming they have supplied goods or services and not been paid. As in this situation, the Trustee states that there is no prohibition against a person offering a consensual mechanics and materialmen's lien on any amount of acreage they own.

h. Need to Pay an Attorney. In order to pursue any of the causes of action the Debtors believe exist, the Trustee stated he would have to hire another attorney or hire himself, whose fees would be paid by the estate. If on a direct fee basis, the Trustee would deplete all money he holds, and likely more, to pay an attorney. Further, he does not believe that an attorney would accept the representation on a contingency fee basis because that attorney would see the tremendous amount of work that must be done to pursue the alleged claims,

given that the claims are tort-based causes of action which would be used to undue other legal actions that have occurred, such as the foreclosure.

Additionally, any such suit would require the taking of many depositions, resulting in high expenses. Also, to pursue such a lawsuit would delay the closing of the estate, causing prejudice to the other creditors. Additionally, the timely-filed claims that can now be paid 100% would be asked, in effect, to use the money they would otherwise receive to fund litigation which might only result in more money being brought into the estate for the payment of the untimely-filed claims. The total claims listed on Schedule F of the Debtors' Schedules exceed $509,000. Should any of these claimants file claims now, such claimants would be entitled to be paid prior to the Debtors receiving any funds. Thus, the Debtors want the estate to pursue litigation which poses a great rise to creditors who have filed claims and offers to them minimal to no chance of recovering any money, even if successful. The Court notes that the creditors at risk have voiced no opposition to the proposed settlement in which the estate will receive $5,000 for little to no related cost to the estate.

i. Abandonment of the Alleged Causes of Action. The Trustee repeated that he has a fiduciary duty to all creditors, including those who file timely claims and those who file untimely claims. His job is to maximize the return to all creditors. He considered abandoning the alleged causes of action, however, to do so means passing up the $5,000 that has been offered by the Bank to buy peace. With this additional $5,000 in the estate,

the Trustee will increase the return to untimely-filed claims from about 7% to 30 to 35%.

10. Farmers State Bank's Position. Attorney Sam Kinslow proffered his testimony that the Bank disputes it has any liability for the alleged causes of action the Debtors claim exist and believes there is no value to this alleged asset scheduled by the Debtors. For example, the Bank believes that all the alleged causes of action were barred by limitations prior to the Debtors filing suit in state court in Milam County and that this defense still remains for the Bank. The Bank has made a business decision to buy peace by offering $5,000 to the Trustee in settlement of the claims brought in the state court suit and to receive a release of all claims that exist or may exist between it and the estate. The Bank considers the $5,000 to be a generous sum, considering that on their original schedules, the Debtors listed the value of the alleged causes of action as "zero" and later amended the value to be "unknown."

Conclusions of Law

1. The Fifth Circuit has clearly set forth what factors the trial court must consider when determining whether a proposed compromise of claims is in the best interest of the estate. The Fifth Circuit has declared:

> To assure a proper compromise the bankruptcy judge must be apprised of all the necessary facts for an intelligent, objective, and educated evaluation. He must compare the "terms of the compromise with the likely rewards of litigation." He must evaluate and set forth in a comprehensible fashion: (1) [t]he probability of success in the litigation, with due consideration

> for the uncertainty in fact and law, (2) [t]he complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (3) [a]ll other factors bearing on the wisdom of the compromise.

In re Jackson Brewing Co., 624 F.2d 599. 602 (5th Cir. 1990); see also In re Matter of Cajun Elec. Power Co-op, Inc., 119 F.3d 349, 355 (5th Cir. 1997) (reaffirming the bankruptcy judge's responsibility to make a well-informed decision in light of the Jackson Brewing factors). Other factors "bearing on the wisdom of compromise" include consideration of whether settlement is in the best interest of the creditors with "proper deference" to the creditors' reasonable views, and whether the settlement is the result of arms-length bargaining or collusion. See Cajun Elec. Power, 119 F.3d at 356. Additionally, the bankruptcy court must evaluate the fairness and equity of the settlement on more than just "unsubstantiated, gratuitous declarations regarding an estate's worth." In re Matter of AWECO, Inc., 724 F.2d 293, 299 (5th Cir. 1984), cert. denied, 469 U.S. 880 (1984). The bankruptcy court is obligated to "act independently, out of its own initiative, for the benefit of all creditors . . . even where the creditors are silent." Id. Thus, "[a]n approval of a compromise, absent a sufficient factual foundation, inherently constitutes an abuse of discretion." Id.

2. Here, the Trustee has proffered clear evidence that the settlement with the Bank is in the best interest of the estate's creditors. The Trustee provided the Court with uncontroverted evidence how he investigated and evaluated each alleged cause of action that the Debtors

assert exist. The Trustee provided the Court with uncontroverted evidence of the great likelihood that none of the causes of action would be successful, should a lawsuit be brought, given the facts and the law working against each of the causes of action. The Trustee provided uncontroverted evidence that, should he pursue a lawsuit of the alleged causes of action, not only would he expend all estate assets in the pursuit of such a suit, but he would forego the opportunity to increase estate assets by the $5,000 settlement offered by the Bank, an amount which will inure to the benefit of other, additional creditors. He provided evidence of the delay and prejudice all creditors of the estate would experience should such a suit be brought, given the financial reality of bringing and paying for the costs of such a suit and the reasonable likelihood that no recovery be had, or if a recovery did occur, the likelihood that the recovery amount would be insufficient to pay the Debtors any funds after the required payments to creditors. The Trustee provided uncontroverted evidence that abandonment of the alleged causes of action was not in the best interests of all estate creditors.

3. The Bank provided uncontroverted evidence that it was making a monetary settlement offer it considered generous and in an amount much more than the alleged causes of action were worth, given the Bank's position that it held viable defenses to all of the claims. However, the Bank made a business decision to buy peace and receive a release of claims.

4. Incorporating all findings of fact herein, and having reviewed the proposed settlement in light of the factors set forth in Jackson Brewing Co., Cajun Elec. Power,

and Matter of AWECO, the settlement is in the best interest of the creditors of the estate, including those with timely-filed and untimely-filed claims. The settlement will be approved over the Debtors' objection thereto. An order so stating will be entered.

SO ORDERED.

SIGNED this 18 day of November, 2004.

s/ Larry E. Kelly
LARRY E. KELLY
UNITED STATES CHIEF BANKRUPTCY JUDGE

APPENDIX D – ORDER OF THE 20th JUDICIAL DISTRICT COURT OF MILAM COUNTY, TEXAS GRANTING PLEA IN ABATEMENT /MOTION TO COMPEL ARBITRATION DATED AND FILED AUGUST 23, 2002

DISTRICT COURT OF MILAM COUNTY, TEXAS, 20th JUDICIAL DISTRICT

CAUSE NO. 28279

SUSAN G. MARTIN and
STEPHEN C. MARTIN,

Plaintiffs

v.

SANDERSON FARMS, INC. and
FARMERS STATE BANK, N.A.,

Defendants

ORDER GRANTING PLEA IN ABATEMENT /MOTION TO COMPEL ARBITRATION

On the 8th day of August, 2002 came on to be heard the Plea in Abatement/Motion to Compel Arbitration filed in this cause by Sanderson Farms, Inc (Production Division). Having considered the evidence submitted, the pleadings on file with the Court and the argument of counsel, the Court finds that there exists a valid arbitration agreement between Susan Martin and Sanderson Farms, Inc. (Production Division), that the claims raised by Susan Martin in this lawsuit fall within the scope of the said arbitration agreement, and that the right to arbitration has not been waived. The parties'

arbitration agreement is, therefore, subject to enforcement in accordance with the provisions of Texas Civil Practice and Remedies Code. The Court is of the opinion that the motion to abate this proceeding and to order the parties to arbitration should be GRANTED.

IT IS, THEREFORE, ORDERED that:
1) Susan Martin and Sanderson Farms, Inc. (Production Division) shall submit to binding arbitration the entire controversy between them in accordance with the terms of the arbitration agreement dated February 19, 1999. The parties are ordered to commence arbitration of their disputes in Dallas, Texas by October 1, 2002.
2) All of the above issues shall be heard and finally determined by the arbitrators selected in accordance with the terms of the arbitration agreement, and arbitration shall result in a final award.
3) This cause is stayed during the pending the arbitration of the matter pursuant to the rules of the American Arbitration Association and in accordance with this order, and the parties shall report back to this Court when those proceedings have terminated.

SIGNED this 23rd day of August, 2002.

s/ Ed Magre
ED MAGRE
JUDGE PRESIDING

APPENDIX E – ORDER OF THE 20th JUDICIAL DISTRICT COURT OF MILAM COUNTY, TEXAS GRANTING PLAINTIFFS' MOTION FOR NONSUIT
DATED AND FILED MARCH 18, 2003

DISTRICT COURT OF MILAM COUNTY, TEXAS, 20th JUDICIAL DISTRICT

CAUSE NO. 28279

SUSAN G. MARTIN and
STEPHEN C. MARTIN, Plaintiffs

v.

SANDERSON FARMS, INC. and
FARMERS STATE BANK, N.A., Defendants

ORDER ON PLAINTIFFS' NONSUIT

CAME ON TO BE HEARD, PLAINTIFFS, Susan G. Martin and Stephen C. Martin, Motion on Plaintiffs' Nonsuit Against Defendants, Sanderson Farms, Inc. and Farmers State Bank, NA. and the Court, having examined the Motion finds that the Motion is in good order and should be GRANTED. IT IS ACCORDINGLY ORDERED that PLAINTIFFS' Nonsuit Against Defendants is permitted.

SIGNED this 18th day of March, 2003.

s/ Ed Magre
ED MAGRE
JUDGE PRESIDING

APPENDIX F – ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, WACO DIVISION – DENYING APPELLANT'S MOTION TO REMOVE THE CASE FROM THE BANKRUPTCY COURT PURSUANT TO 28 U.S.C. § 157(d).

DATED APRIL 23, 2005
FILED APRIL 25, 2005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

DOCKET NO. W-05-CA-007

In Re:
STEPHEN MARTIN and SUSAN MARTIN, Debtors

STEPHEN MARTIN and SUSAN MARTIN,
Appellants

v.

SANDERSON FARMS, INC., JAMES STUDENSKY, and FARMERS STATE BANK,
Appellees

ORDER

Came on to be considered the following motions filed by Appellants: (1) Motion to Dismiss the Trustee's Motion to Compromise and Settle Controversy with Sanderson Farms, Inc., Then Vacate as Moot the February 2, 2005 Order of the Bankruptcy

Appendix F

Court Titled, Interim Order on Chapter 7 Trustee's Motion to Compromise and Settle Controversy with Sanderson Farms, Inc. Pursuant to Bankruptcy Rule 9019; (2) Motion to Vacate the Court's Order Entered March 8, 2005 and Rehear Studensky's Motion to Dismiss Appeal Entered March 4, 2005; and (3) Appellants' Motion for 28 U.S.C. § 157(d) Procedure — Upon Reversal of the Bankruptcy Orders Being Appealed. Appellee Sanderson Farms has additionally filed a Motion to Dismiss Appellants' Motion for 28 U.S.C. § 157 Procedure. Having reviewed the motions, the responses, and the file in this case, the Court is persuaded the Appellants' motions are without merit and should be denied. Appellants' attempted interlocutory appeal was properly dismissed, this Court properly denied any attempt to stay proceedings in the Bankruptcy Court, and there is no legal basis for withdrawing the reference from the Bankruptcy Court Accordingly, it is

ORDERED that Appellants' Motion to Dismiss the Trustee's Motion to Compromise, Motion to Vacate the Court's Order Entered March 8, 2005, and Motion for 28 U.S.C. § 157 Procedure are **DENIED**. It is further

ORDERED that Sanderson Farms' Motion to Dismiss Appellants' Motion for 28 U.S.C. § 157 Procedure is **DENIED** as moot.

SIGNED this 23rd day of April, 2005.

s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
United States District Judge

APPENDIX G – ORDER OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, WACO DIVISION – GRANTING TRUSTEE'S MOTION TO DISMISS APPEAL BY STEPHEN MARTIN AND SUSAN MARTIN OF INTERIM ORDER ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH SANDERSON FARMS, INC. PURSUANT TO RULE 9019

DATED AND FILED MARCH 7, 2005

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

DOCKET NO. W-05-CA-007
Appeal to the District Court from the Bankruptcy Court's Interim Order entered 2/2/05
Bankruptcy No. 03-61633

In The Matter Of:
STEPHEN CLYDE MARTIN and
SUSAN GAYLE MARTIN,
Debtors/Appellants

ORDER GRANTING TRUSTEE'S MOTION TO DISMISS APPEAL BY STEPHEN MARTIN AND SUSAN MARTIN OF INTERIM ORDER ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH SANDERSON FARMS, INC. PURSUANT TO RULE 9019

Appendix G

On this day, the Court considered the Trustee's Motion to Dismiss Appeal by Stephen Martin and Susan Martin of Interim Order on Chapter 7 Trustee's Motion to Compromise and Settle Controversy with Sanderson Farms, Inc. Pursuant to Rule 9019 and finds that such motion has merit and should be granted.

It is ORDERED that the appeal by Stephen Martin and Susan Martin of Interim Order on Chap er 7 Trustee's Motion to Compromise and settle Controversy with Sanderson Farms, Inc. Pursuant to Rule 9019 is hereby dismissed. It is further ORDERED that the Bankruptcy Court may proceed with a hearing on Trustee's Motion to Compromise Controversy with Sanderson Farms, Inc.

Signed this 7th day of March, 2005.

s/ Walter S. Smith, Jr.
WALTER S. SMITH, JR.
United States District Judge

APPENDIX H – INTERIM ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TEXAS ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH SANDERSON FARMS, INC. PURSUANT TO BANKRUPTCY RULE 9019, AND TO ALLOW FOR BIDS TO BE RECEIVED FROM ANY PARTY IN INTEREST TO PURCHASE THE CAUSES OF ACTION SOUGHT TO BE COMPROMISED AND SETTLED.
DATED AND FILED FEBRUARY 2, 2005

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS

CASE NO. 03-61633-LEK
Chapter 7 Petition

In Re: STEPHEN CLYDE MARTIN and
SUSAN GAYLE MARTIN, Debtors

INTERIM ORDER ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH SANDERSON FARMS, INC. PURSUANT TO BANKRUPTCY RULE 9019 AND TO ALLOW FOR BIDS TO BE RECEIVED FROM ANY PARTY IN INTEREST TO PURCHASE THE CAUSES OF ACTION SOUGHT TO BE COMPROMISED AND SETTLED

Before the Court is the Trustee's Motion to Compromise and Settle Controversy with Sanderson

Farms, Inc. ("Sanderson Farms") Pursuant to Bankruptcy Rule 9019 filed December 23, 2004 (Doc.#110). No party in interest has filed an objection in writing to said motion. However, because the Debtors are appearing pro se in their bankruptcy case, and because of the prior history of this case, the Court enters this order to clarify the current status of the situation and to allow parties in interest to this case to bid and acquire the estate's interest, if any, in whatever cause of action this bankruptcy estate may own against Sanderson Farms. In light of the pending offer by Sanderson Farms, a counteroffer must be in cash or the equivalent and in an amount higher than that currently offered to the Trustee in settlement of all alleged pre-petition and post-petition causes of action. The estate is not warranting that any such cause of actions exists nor that it is assignable.

The Debtors filed this voluntary chapter 7 on July 14, 2003. Property of their bankruptcy estate pursuant to 11 U.S.C. § 541 includes their alleged cause of action against Sanderson Farms. In the Debtors' schedules of assets filed with their bankruptcy chapter 7 petition, specifically, on Schedule B in answer to question #33, the Debtors indicated that they had a "potential cause of action against Sanderson Farms, Inc and/or Farmer's State Bank," which they valued as having a $0.00 value. See Schedule B of Petition, Answer to Question 33, filed July 14, 2004 (Doc. #2). In a later amended Schedule B, the Debtors listed the value of this asset as "unknown." See Amended Schedule B of Petition, Answer to Question 33, filed September 23, 2004 (Doc. #20). In their schedules of exempt property, the Debtors did not exempt this

alleged cause of action. Additionally, because they claimed the personal property exemptions allowed under state law, Texas law does not allow for this type of asset, a cause of action, to be claimed exempt. See Texas Property Code § 42.002. As a non-exempt asset, this alleged cause of action belongs to the Chapter 7 trustee of the Debtors' estate. "It is true that if a cause of action *belongs* to the estate, then the trustee has exclusive standing to assert the claim." In re Porras, 312 B.R. 81, 94 (Bankr. W.D. Tex. 2004) (citing In re Educators Group Health Trust, 25 F.3d 1281, 1284 (5th Cir.1994), and In S.I. Acquisition, Inc. v. Eastway Delivery Service, Inc. (S.I. Acquisition, Inc.), 817 F.2d 1142, 1153 (5th Cir.1987) (An "alter ego action is a right of action belonging to [the debtor] and, as such, is property of the estate.")). As such, currently, the Debtors have no right nor standing to pursue the causes of action now owned by their bankruptcy estate.

On November 3, 2004, the Court held a hearing on various motions filed by the Debtors. None of those motions asserted any allegations against Sanderson Farms. On November 18, 2004, the Court issued orders on each of the motions. Then, on November 29, 2004, the Debtors filed a notice of appeal to the United States District Court of these orders. The Debtors' pending appeal does not concern nor affect this pending motion to compromise and settle by the Trustee with Sanderson Farms, thus, the Court can consider and rule upon this settlement motion.

In this motion to compromise and settle with Sanderson Farms, the Trustee, as the representative of the estate, is agreeing to accept $5,000.00 from Sanderson Farms as consideration for his agreement to

settle all pre-petition and post-petition claims that the estate may have against Sanderson Farms. In turn, the Trustee, acting on behalf of the estate, will execute a full and final release of all such claims in favor of Sanderson Farms. If the compromise and settlement is approved, this Court will have ended its work on the matter.

Therefore, the Court desires to notify all creditors, the Debtors, and any parties in interest that, should they choose to purchase the alleged cause of action(s) held by the bankruptcy estate against Sanderson Farms, if any exist, they are to submit a bid in writing to the Trustee at his office located at 3912 West Waco Drive, Waco, Texas. Such offer is to be for cash and once approved by the court must be remitted to the Trustee in cash or cashier's check or money order within 10 days of entry of the order approving the offer. Said bids should exceed the $5,000.00 amount offered by Sanderson Farms. All such bids are to be submitted by Friday, February 25, 2005. A hearing will be held for the Court to consider the Trustee's motion to compromise and settle, and, if any bids have been timely made, to consider and possibly approve any bid offers the Trustee has received. The estate is not warranting that any such cause of actions exists nor that it is assignable. It is therefore

ORDERED that a hearing be held on March 9, 2005 at 9:00 a.m. on the Trustee's Motion to Compromise and Settle Controversy with Sanderson Farms and, possibly, on any bid offers that the Trustee may have timely received; it is further

ORDERED that the Clerk of the Court is to send a copy of this order to the Debtors, the Trustee, all creditors, and any other party in interest.

SIGNED this 02 day of February, 2005.

s/ Larry E. Kelly
LARRY E. KELLY
UNITED STATES CHIEF BANKRUPTCY JUDGE

FILED
AUG 21 2007
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-1620

IN THE

Supreme Court of the United States

STEPHEN MARTIN AND SUSAN MARTIN,

Petitioners,

v.

SANDERSON FARMS, INC.; JAMES STUDENSKY, CHAPTER 7 TRUSTEE; AND FARMERS STATE BANK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT SANDERSON FARMS, INC.

SUSAN HARDIE JACKS
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STATEMENT PURSUANT TO RULE 29.6

Respondent, Sanderson Farms, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

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STATEMENT OF THE CASE

Petitioners Susan and Stephen Martin are chapter 7 debtors. In February 1998, more than five years before their bankruptcy filing, Susan Martin entered into a Hatching Egg Producer's Agreement with Sanderson Farms, Inc. (Production Division) ("Production Division") – a wholly-owned subsidiary of respondent Sanderson Farms, Inc. As a hatching egg producer, Mrs. Martin agreed that she would accept and care for flocks of hens and roosters that Production Division delivered to her farm site, that Production Division would collect the eggs laid by the flock, and that the eggs as well as the birds were the property of Production Division. In exchange, Production Division agreed to compensate Mrs. Martin. The Hatching Egg Producer's Agreement contained an arbitration clause requiring that any dispute arising out of or relating to the contract be resolved by binding arbitration.

Both Mr. and Mrs. Martin borrowed money from respondent Farmers State Bank (the "Bank") to construct the barns necessary for the hatching egg business and to purchase the necessary equipment.

A year before they commenced their chapter 7 bankruptcy case, the Martins filed a state court lawsuit against Sanderson Farms and the Bank alleging, among other things, that Sanderson Farms had defrauded them and engaged in a conspiracy with the Bank. The state court granted Production Division's motion to enforce the arbitration clause and abated the case. The Martins did not appeal that decision. They commenced but did not continue an arbitration proceeding as to Sanderson Farms and the Bank, and then voluntarily nonsuited the state court action.

Several months later, in July 2003, the Martins commenced their voluntary chapter 7 bankruptcy case; they received their discharge in October 2003. Their verified bankruptcy schedules listed their claims against Sanderson Farms and the Bank as assets of the bankruptcy estate with "zero" value, later amended to claim an "unknown" value.

The Martins did not identify their claims against Sanderson Farms and the Bank as exempt property, and the claims became and remained property of the bankruptcy estate.

Respondent James Studensky, the chapter 7 trustee ("Trustee"), entered into a settlement with the Bank and sought bankruptcy court approval of his compromise. Pro se, the Martins objected and filed several motions, including a motion to have Sanderson Farms fined millions of dollars, its assets frozen, and its executives imprisoned for alleged violations of the automatic stay relating to the removal of Sanderson Farms' flock, whose care Mrs. Martin had relinquished to Production Division.[1] The Martins also sought similar punitive relief against the Bank as well as vacation of an order authorizing the Bank's foreclosure of the farm site, despite the Martins' express intentions in their bankruptcy statement to surrender that property to the Bank. Appendix C, p. 18a.[2] In November 2004, following a hearing, the bankruptcy court denied these requests and granted the Trustee's motion to compromise with the Bank. The Martins appealed those decisions.

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[1] The Martins' changes of strategy coincide with the withdrawal of their bankruptcy counsel and their self-representation.

[2] References to the Appendix are to the Appendix made a part of the Martins' petition for writ of certiorari.

While the Martins' appeal was pending before the district court, Trustee and Sanderson Farms entered into a settlement agreement to compromise the estate's alleged claims against Sanderson Farms. The bankruptcy court entered "an interim order" establishing procedures by which any party in interest (including the Martins) could submit bids higher than the amount Sanderson Farms had offered to pay in settlement. Appendix H. The Martins filed a notice of appeal of this interlocutory order, attempting to "supplement" their pending appeal to add a new issue concerning the Sanderson Farms compromise. The district court dismissed this appeal from the interlocutory interim order. Appendix G. The Martins appealed that dismissal to the court of appeals.

While their appeal was before the district court, the Martins requested that the district court withdraw the reference of their bankruptcy case in an effort to obtain a more favorable forum. The district court denied that request, finding "no legal basis" for it. Appendix F. The district court also affirmed the bankruptcy court's decisions, Appendix B, and the Martins "supplemented" their appeal in the Fifth Circuit to add the district court's new rulings. Through "supplemental designations" and through their brief, the Martins attempted to place before the court of appeals numerous issues never raised in the bankruptcy court or properly designated pursuant to Federal Rule of Bankruptcy Procedure 8006.

Meanwhile, the bankruptcy court heard the Trustee's compromise of controversy with Sanderson Farms and approved it in May 2005. Sanderson Farms filed a timely motion to correct a factual error, which the bankruptcy court granted on July 12, 2007. The Martins did not perfect an appeal of that order but have complained of it in their

"Supplement in Support of Petition for Writ of Certiorari" filed with this Court.

While their case was pending in the court of appeals, the Martins filed notices of constitutional issues pursuant to Federal Rule of Appellate Procedure 44, generally stating that constitutional issues relating to the Federal Arbitration Act and the Texas Arbitration Act were part of their appeal and should be brought to the attention of the Texas Attorney General and the United States Attorney General. The clerk of the court of appeals provided notification to the appropriate Attorneys General that the Martins had raised such issues. Neither Attorney General intervened in the appeal.

The court of appeals rendered its decision in February 2007. It affirmed the district court's judgment upholding the November 2004 bankruptcy court orders and dismissed the Martins' appeal of the interim order. The court of appeals declined to address issues raised in the Martins' brief but not presented to the bankruptcy and district courts and dismissed all such claims.

In May 2007, the Martins filed their petition for writ of certiorari.

In accordance with Supreme Court Rule 15, Sanderson Farms disputes the Martins' Statement of Facts as erroneous in these respects:

- The "1999 labor Agreement" referenced was not between Mrs. Martin and Sanderson Farms, Inc., but between Mrs. Martin and Production Division (petition p. 12).

- There was no 1998 pre-construction investment contract among the Martins, Sanderson Farms, and the Bank (petition p. 12).

- Sanderson Farms did not prematurely remove the annual chicken flock from the Martins' farm; rather, Trustee authorized the removal and its timing (petition p. 13).

- The bankruptcy court did not "open up" the state court's nonsuit and add the Bank and Stephen Martin as parties to the arbitration order (petition pp. 13-14). The Martins nonsuited the state court case 20 months before the bankruptcy court entered its orders. Appendix E.

- On appeal from the bankruptcy court's orders, the Martins did not challenge the bankruptcy court's "authority" to approve the compromise (petition p. 14). While the Martins did argue on appeal that the bankruptcy court could not approve a compromise of a "potential cause of action," they did not challenge the bankruptcy court's authority or jurisdiction to approve a compromise.

- The causes of action listed in the Martins' schedules were not "non-estate property" (petition p. 14). Upon the Martins' bankruptcy filing, their causes of action became property of their bankruptcy estate. The Martins scheduled those claims as assets of their bankruptcy estate with an "unknown" value, and they did not exempt them. Further, the bankruptcy court approved the compromise on the basis that the claims were property of the estate that

the Trustee had the right to compromise. Appendix C. The Martins did not challenge on appeal the issue of whether causes of action are property of the estate.

- The Trustee's compromise of controversy with Sanderson Farms was not a "duplicate" compromise (petition p. 15).

- The Martins' appeal of the interim order did not challenge the bankruptcy court's "authority/ jurisdiction" to enter the order (petition p. 15).

REASONS FOR DENYING THE PETITION

I. The Martins Do Not Own the Causes of Action on Which They Base Their Petition

The gravamen of the Martins' petition is that they want their lawsuit back. To accomplish that, they claim that they were unconstitutionally denied the right to have their disputes resolved by a court fully empowered with Article III authority and were improperly relegated to having their disputes resolved (i) first by a non-Article III state court judge, (ii) then by an arbitrator lacking Article III powers, and (iii) then by an Article I bankruptcy court. To bolster their argument, the Martins claim that these courts or arbitrators improperly denied them a jury trial and that the U.S. district court did as well through its refusal to withdraw the reference of their chapter 7 bankruptcy case.

The Martins' arguments fail for several reasons.

First and foremost, the Martins' arguments are based on the fundamentally flawed premise that the Martins own the causes of action on which they base their arguments. Their claims about denial of a jury trial, arbitration, and bankruptcy jurisdiction arise out of the Martins' prepetition dealings with Production Division, Sanderson Farms, and the Bank. All of these claims became property of the Martins' bankruptcy estate when they filed their chapter 7 petition on July 14, 2003.[3] All courts below – the bankruptcy court, the district court, and the court of appeals – have based their decisions on the irrefutable fact that the Martins lost ownership of the claims upon the filing of their bankruptcy case and that the claims belong to the Trustee.

The Martins have no standing to complain now about the resolution of their state court proceeding, the order to arbitrate, the settlement of their claims, and the denial of a jury trial. Upon their bankruptcy filing, the Martins' claims became property of their bankruptcy estate, and the Trustee, vested with ownership rights, exercised his right to settle with Sanderson Farms and with the Bank. By filing bankruptcy, the Martins made a decision to exchange their non-exempt assets for a full and complete discharge of their liabilities. Having received their discharge, they may not now get back their assets.

The bankruptcy court approved a settlement of all of the Martins' prepetition claims against the Bank in November 2004. The bankruptcy court approved the Trustee's settlement with Sanderson Farms and Production Division in May 2005,

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[3] 11 U.S.C. § 541(a); *Yaquinto v. Segerstrom (In re Segerstrom)*, 247 F.3d 218, 223-224 (5th Cir. 2001) (citing *Louisiana World Exposition v. Federal Ins. Co.*, 858 F.2d 233, 245 (5th Cir.1988)).

and a final order approving that compromise was entered on July 12, 2007.

Accordingly, the Martins have no standing to challenge (i) the constitutionality of the Texas Constitution, the Federal Arbitration Act and the Texas Arbitration Act, (ii) their alleged right to a jury trial, or (iii) the jurisdiction of the bankruptcy court to adjudicate controversies regarding property of the estate. The claims were the Trustee's claims to resolve, not the Martins'.

II. The Martins Improperly Attempt to Raise Constitutional Issues Not Presented to or Preserved in the Lower Courts

The Martins' challenges to the constitutionally of the Federal Arbitration Act, the Texas General Arbitration Act, Article V of the Texas Constitution, and the Bankruptcy Amendments and Federal Judgeship Act of 1984 ("BAFJA") were not raised in the bankruptcy or district courts. This Court does not decide issues in the first instance absent exceptional circumstances.[4] This case does not present exceptional circumstances, so the Martins' petition should be denied.

Moreover, the Martins failed to identify and preserve these issues through proper designation under Federal Rule of Bankruptcy Procedure 8006. Issues not properly identified

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[4] *Gonzalez v. Duenas-Alvarez*, __ U.S. ___, 127 S.Ct. 815, 823 (2007); *National Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459, 469-470 (1999); *Roberts v. Galen of Va., Inc.*, 525 U.S. 249, 253-254 (1999) *(per curiam)*; *United States v. Bestfoods*, 524 U.S. 51, 72-73 (1998).

in accordance with Bankruptcy Rule 8006 are deemed waived.[5]

The Martins' complaints about denial of their right to a jury trial in the state court case should have been raised in their state court action, which they voluntarily dismissed before their bankruptcy filing. The Martins' entitlement to a jury trial was never presented to or decided by the bankruptcy court; accordingly, the foundation for this Court's review of a lower court's decision does not exist.

Neither was any issue regarding Texas Constitution Article V presented to the bankruptcy court or district court or preserved in any Rule 8006 designation of issues. This issue made its first appearance in the Martins' brief in the court of appeals.

The same is true as to the Martins' challenges to Title 28, sections 151, 157, and 1334. The Martins never challenged the constitutionality of these sections in the courts below.

Having failed to present these issues previously, the Martins may not now seek relief from this Court on new theories.

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[5] *Zimmermann v. Jenkins (In re GGM, P.C.)*, 165 F.3d 1026 (5th Cir. 1999).

III. The Federal Arbitration Act, the Texas General Arbitration Act, and Article V of the Texas Constitution are Not Unconstitutional Because Congress did not Confer Article III Powers on Private Arbitrators and State Judges

The Martins' new theory for recovering ownership of their lawsuit is to claim that they were denied the right to have their disputes resolved by an Article III court.

As stated above, this theory fails because the Martins do not own the claims.

Second, an agreement to arbitrate is a voluntary decision to present disputes to a non-judicial process in lieu of the judicial process, including a jury trial. The Martins were not forced to arbitrate under either the Federal Arbitration Act or the Texas General Arbitration Act. Mrs. Martin contractually agreed to arbitrate disputes relating to the Hatching Egg Producer's Agreement,[6] and the Martins jointly commenced an arbitration proceeding against Sanderson Farms and the Bank but later abandoned it. They then voluntarily dismissed their Texas state court action and chose to file bankruptcy. The choice not to present their disputes to a jury was theirs, and the loss of ownership of their claims through the bankruptcy filing was their voluntary choice as well.

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[6] The Martins seek to avoid the arbitration clause contained within the Hatching Egg Producer's Agreement by claiming that they and Sanderson Farms were parties to a 1998 "contract" that contained no arbitration clause. The Martins have never produced any contract supporting this claim, and their own bankruptcy schedules affirm that the 1999 Hatching Egg Producer's Agreement is the contract between Mrs. Martin and Production Division. The Martins' schedules reflect no contract between them and Sanderson Farms.

The Martins erroneously rely on this Court's *Marathon*[7] decision as a basis for claiming that non-judicial arbitrators are unconstitutional delegates of the Article III federal courts, just as this Court concluded that Congress had delegated too much jurisdiction to Article I bankruptcy judges under the previous Bankruptcy Act. The Martins' argument fails from the start because non-judicial arbitrators receive their adjudicative powers contractually, not from Congress or the Article III federal courts.[8] The United States Constitution, Article III, does not "confer" powers on private arbitrators.

Nor does Article III of the U.S. Constitution require that state judges have the same judicial "security" of life-time appointment and salary protection as do federal judges. That article addresses the "judicial power of the United States," not of the individual states. The U.S. Constitution reserved for the states or to the people those powers not delegated to the United States.[9]

IV. Title 28's Provisions Conferring Power on the Bankruptcy Courts are Constitutional

Contrary to the Martins' argument, Congress properly responded to this Court's *Marathon* holding by enacting BAFJA, and, specifically, 28 U.S.C. §§ 151, 157 and 1334.

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[7] *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

[8] *See* 9 U.S.C. §§ 2, 4 (Westlaw 2007); TEX. CIV. PRAC. & REM. CODE § 171.0001 (Westlaw 2007).

[9] United States Const., amend. X.

Numerous courts have upheld the constitutionality of those jurisdictional grants of authority to the bankruptcy courts.[10]

In arguing that they were deprived of constitutional rights because the ownership of their claims and the settlement of those claims were heard by a bankruptcy judge empowered under Article I, the Martins confuse the difference between a bankruptcy court's plenary jurisdiction to adjudicate "core proceedings," such as compromises of controversies, with "related to proceedings." The bankruptcy court undoubtedly had jurisdiction under 28 U.S.C. § 157 to adjudicate the Trustee's motion to compromise controversy with Sanderson Farms and the Martins' various motions against Sanderson Farms concerning alleged violations of the automatic stay. These matters "arise under" the Bankruptcy Code since they directly involve Bankruptcy Rule 9019 (compromises of controversy) and Bankruptcy Code section 362 (automatic stay). As core proceedings, these matters fell squarely within the power of the bankruptcy court to adjudicate and to render final judgments.

Also fundamentally flawed is the Martins' argument that Congress unconstitutionally delegated power to the bankruptcy court that enabled the court to deprive them of their prepetition claims against Sanderson Farms. The Martins' loss of ownership of their putative claims is a

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[10] *In re Rheuban*, 128 B.R. 551, 563 (Bankr. C.D. Cal. 1991) (and numerous cases cited therein); *Earle Indus., Inc. v. Bond Gen'l Contracting, Inc. (In re Earle Indus., Inc.)*, 71 B.R. 919, 925 (Bankr. E.D. Pa. 1987); *Storage Equities, Inc. v. Delisle*, 91 B.R. 616, 618 (D. Ga. 1988); *Nordberg v. Republic Nat'l Bank of Miami (In re Chase & Sanborn Corp.)*, 51 B.R. 733, 734 (Bankr. S.D. Fla. 1985); *Production Steel, Inc. v. Bethlehem Steel Corp. (In re Production Steel, Inc.)*, 48 B.R. 841 (M.D.Tenn.1985).

function of Bankruptcy Code section 541, which defines property of the estate, not the bankruptcy court's adjudication of the Trustee's motions to compromise controversy.

The bankruptcy court properly exercised its jurisdictional powers to approve settlements between the Trustee, as owner of the estate's claims, and Sanderson Farms. Nothing in that exercise violated Article III of the U.S. Constitution.

V. The District Court Properly Refused to Withdraw the Reference of the Martins' Bankruptcy Case

While their appeal of the November 2004 bankruptcy court orders was pending in the district court, the Martins requested that the district court withdraw the reference of their chapter 7 bankruptcy case. The district court properly denied the Martins' motion as without legal basis. Appendix F. In their motion, the Martins requested that the district court withdraw the reference of their entire bankruptcy case because Sanderson Farms had filed a motion for sanctions against the Martins.

The Martins were forum-shopping, and their request for withdrawal of their entire bankruptcy case to the district court was unsupported in fact and law. Withdrawal of the reference of an entire bankruptcy case is "extremely rare."[11] The Martins showed no good cause for removal of the chapter 7 case from the bankruptcy court, and they mistakenly relied on section 157(d)'s provisions for removal of an adversary proceeding, rather than a chapter 7 case, to justify removal.

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[11] W.L. Norton, Jr., 1 NORTON BANKRUPTCY L. & PRAC. 2d § 8.1 (2004).

The Martins state that the reason for their motion to withdraw the reference was "to finally be able to exercise the jury right in an Article III court" (petition, p. 26). Although their motion to withdraw the reference does not support that characterization, even if it did, the district court's decision to deny withdrawal of the reference was appropriate. The Martins attempt to draw a connection between withdrawal of the reference of their chapter 7 bankruptcy case and their entitlement to a jury trial on any claims against Sanderson Farms. None exists. Placement of the chapter 7 case in the U.S. district court would not alter the underlying impediments to the Martins' prosecution of claims against Sanderson Farms: they no longer owned the claims, and a valid arbitration provision required that Mrs. Martin arbitrate any disputes arising out of the Hatching Egg Producer's Agreement.

A district court can grant a motion to withdraw the reference "for cause shown."[12] The district court found "no legal basis" to withdraw the reference, and the Martins still have shown none that would justify this Court's granting their petition for writ of certiorari.

Additionally, the Fifth Circuit properly made no specific comment about the Martins' complaints that the district court erred in denying their motion because the Martins abandoned that argument by failing to cite any authority in support of their appeal point.[13] The district court's denial of the motion to withdraw the reference of the bankruptcy case was also an interlocutory decision not ripe for appeal.[14]

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[12] 28 U.S.C. § 157 (Westlaw 2007).

[13] *United States. v. Cyprian*, 197 F.3d 736, 741 (5th Cir. 1999).

[14] *Caldwell-Baker Co. v. Parson*, 392 F.3d 886, 888 (7th Cir. 2004); *In re Pruitt*, 910 F.2d 1160, 1166 (3d Cir. 1990) (citing numerous cases holding that such decisions are interlocutory and non-appealable).

VI. The Martins Improperly Seek Appellate Remedies From This Court Rather than From the District Court.

In their supplement, the Martins complain about the bankruptcy court's decision to proceed with the administration of their bankruptcy case – specifically, the hearing on Sanderson Farms' motion to correct the previous order approving the compromise between it and the Trustee. The bankruptcy court refused to hear Sanderson Farms' motion while the Martins' appeal was pending in the court of appeals. Upon entry of the court of appeals' mandate, the bankruptcy court scheduled Sanderson Farms' motion for hearing, which was conducted on July 11, 2007.

The bankruptcy court properly exercised jurisdiction to hear Sanderson Farms' motion following the court of appeals' decision. The court of appeals clearly held that jurisdiction over the Trustee's compromise with Sanderson Farms resided in the bankruptcy court because of Sanderson Farms' timely motion to correct the May 2005 judgment. Appendix A, p. 6a.

The Martins' supplement provides no basis for granting the writ, and their petition should be denied.

CONCLUSION

The Martins' attempts to recover ownership of settled claims through new theories of unconstitutionality are unsupportable in fact and law. The Martins no longer own the claims and, therefore, have no basis for complaining about their adjudication. Their effort to analogize this Court's ruling in *Marathon* to their arbitration decision fails from the start for multiple reasons set forth above. And their attempt to challenge the constitutionality of the bankruptcy court's jurisdiction to approve compromises is belated and, in any event, unfounded.

No basis exists for granting the petition for writ of certiorari. No issues in this case are in conflict among the courts of appeal, and no important questions of federal law were decided below.

The petition should be denied.

Respectfully submitted,

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In The

Supreme Court of the United States

STEPHEN MARTIN and SUSAN MARTIN,

Petitioners,

v.

SANDERSON FARMS, INC., JAMES STUDENSKY, and FARMERS STATE BANK,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF FOR RESPONDENT FARMERS STATE BANK IN OPPOSITION

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QUESTION PRESENTED

1. Certified Fed. R. App. P. 44(a) and (b) challenges that raise a single question are presented:

   Whether 28 U.S.C. §§ 151, 157, 1334 (made bankruptcy courts units of the Federal District Courts); the Federal Arbitration Act (FAA) and the Texas General Arbitration Act (TGAA); and Article V of the Texas Constitution – are all similarly unconstitutional in that Congress lacks constitutional authority to confer Article III powers on judges who lack the life tenure and salary security of Article III judges.

RULE 29.6 STATEMENT

Farmers State Bank is wholly owned by Farmers Delaware Bancshares, Inc., a Delaware corporation, which Delaware corporation is wholly owned by Farmers Bancshares, Inc., a Texas corporation. Farmers State Bank is located in Center, Texas.

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BRIEF FOR RESPONDENT FARMERS STATE BANK IN OPPOSITION

STATEMENT OF FACTS

The Petitioners, Steve and Susan Martin, sued Sanderson Farms, Inc. and Farmers State Bank in a Texas state court. The cause of action against Farmers and Sanderson arose from a series of agreements whereby the Martins agreed to construct egg hatching barns for Sanderson with financing from Farmers. Sanderson moved to compel arbitration of all of the Martins' claims against it based upon the arbitration clause in their agreement. The court granted Sanderson's motion and abated the case pending the completion of binding arbitration. The parties did not complete the arbitration because the cost was too high for the Martins. The Martins voluntarily nonsuited their state court case against both Sanderson and Farmers in March of 2003.

In July of 2003, the Martins voluntarily filed a Chapter 7 bankruptcy in federal court for the Western District of Texas and were granted a discharge in October of 2003. The Martins' creditors included Farmers and Sanderson. On their bankruptcy schedules, the Martins listed a cause of action against "Sanderson and/or Farmers State Bank" that they initially valued at zero but later amended to be an "unknown" value. The Martins failed to claim this cause of action as exempt property. This cause of action was based upon the same transactions as the Martins' case in the state court.

The trustee for the bankruptcy estate reached a compromise of this cause of action with both Sanderson and Farmers for $5,000.00 each. In 2004, the trustee moved the bankruptcy court for approval of these compromises. After a

hearing and thoughtful consideration, the court approved the compromise with Farmers and the compromise with Sanderson. The bankruptcy judge's approval of the compromise with Farmers was upheld by the district court and the Fifth Circuit Court of Appeals. The approval of the compromise with Sanderson is pending in the bankruptcy court for the correction of a minor factual error.

The Martins now complain that state and federal laws permitting binding arbitration and the "lack of life tenure and salary security" of not only the bankruptcy judge but also Texas state judges and arbitrators deprived the Martins of constitutionally protected rights. The Martins raised these issues for the first time before the Fifth Circuit Court of Appeals.

REASONS FOR DENYING THE PETITION

1. The Martins failed to preserve for appeal the constitutional issues they argue to this Court.

The Martins argue to this Court that certain provisions of the current bankruptcy law, the "Federal Arbitration Act," the "Texas General Arbitration Act," and Article V of the Texas Constitution are all unconstitutional. However, they neglected to raise any of these issues before the bankruptcy court or the district court. Outside of exceptional cases, it is the settled practice of this Court to

consider on appeal only those questions addressed in the lower courts.[1] This is not an exceptional case.

The Martins also failed to include these issues in the notice of appeal required by Bankruptcy Rule 8006 and so failed to preserve them for appeal.[2] Because of this failing, the Fifth Circuit did not address them. Since these constitutional issues are the only ones listed in the Martins' "Question Presented" on page i of their Petition and they were not preserved for appeal or addressed by the lower courts, the Martins' Petition should be denied.

2. The Martins erroneously believe that the cause of action against Farmers belongs to them and not to the bankruptcy estate and they base their arguments upon this belief.

In their Petition for Review, the Martins claim that two federal acts, one Texas act, and a provision of the Texas Constitution are all unconstitutional because, according to them, these laws prevented them from presenting their cause of action against Farmers to a jury or to a "qualified" judge. The unstated and erroneous premise that underlies the majority of their arguments is that they – the Martins – not the bankruptcy estate, own this cause of action against Farmers.

The Martins failed in two separate ways to maintain ownership or control over the cause of action they alleged

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[1] *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434 (1940) citing *Blair v. Oesterlein Co.*, 275 U.S. 220, 225 (1927); *Duignan v. United States*, 274 U.S. 195, 200 (1927).

[2] *In re GGM, P.C.*, 165 F.3d 1026, 1032 (5th Cir. 1999).

against Farmers when they filed for Chapter 7 bankruptcy. First, the Martins failed to list this cause of action as exempt property on their bankruptcy schedules. They listed this asset on Schedule B – Personal Property – not Schedule C – Property Claimed as Exempt. They did not contest the findings of the Fifth Circuit, the district court, or the bankruptcy court that this cause of action was not listed as exempt property.

Second, they claimed the personal property exemptions allowed to them under Texas state law in their bankruptcy filings. Availing themselves of these exemptions precluded them from characterizing their cause of action against Farmers as exempt property.[3] Since the cause of action against Farmers was not exempt property, it became the property of the bankruptcy estate to be used to satisfy creditors of the estate if possible and ceased to be the Martins' property. "It is true that if a cause of action *belongs* to the estate, then the trustee has exclusive standing to assert the claim."[4] The Martins had no standing to control when, how, or if the claim against Farmers was used once that claim became the property of the bankruptcy estate. The Martins simply do not understand this basic fact and their contentions that their constitutional rights have been abridged flow from this misunderstanding.

The Martins argue that the bankruptcy court did not have the authority to approve the trustee's compromise of

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[3] § 42.002 TEX. PROP. CODE (Lexis 2007)

[4] *In re Porras*, 312 B.R. 81, 94 (Bankr. W.D. Tex. 2004) (citing *In re Educators Group Health Trust*, 25 F.3d 1281, 1284 (5th Cir. 1994) and *In re S.I. Acquisition, Inc. v. Eastway Delivery Service, Inc. (S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1153 (5th Cir. 1987).

the cause of action against Farmers for two reasons. First, because the cause of action belonged to them and was an exempt asset. As explained above, this is simply wrong. Second, because the cause of action was an "imaginary controversy". As near as Farmers can tell, this is sort of a "ripeness" argument and so is inapplicable as a basis to deny the parties involved the opportunity to settle it if they so desired. If the Martins indeed believed the cause of action against Farmers was an "imaginary controversy," why did they list it on their bankruptcy schedule as an asset?

3. The Fifth Circuit was right about the standard of review to be employed when considering the bankruptcy court's decision to approve a compromise of a bankruptcy estate's cause of action against a creditor of the estate.

The Martins claim that the Fifth Circuit should have reviewed *de novo* the bankruptcy court's decision to approve the trustee's compromise of the cause of action against Farmers. The Martins are wrong. Bankruptcy Rule 9019 gives the bankruptcy court the authority to approve a compromise of a bankruptcy estate's claim.[5] When reviewing a bankruptcy court's decision to approve or disapprove a compromise under this Rule, an appellate

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[5] "Rule 9019. Compromise and Arbitration (a) Compromise. On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Notice shall be given to creditors, the United States trustee, the debtor, and indenture trustees as provided in Rule 2002 and to any other entity as the court may direct." Fed. R. Bankr. P. 9019 (Lexis 2007). The Advisory Committee Notes state that Subdivision (a) of this rule is essentially the same as the provisions of former Bankruptcy Rule 191.

court utilizes an abuse of discretion standard.[6] It does not engage in a *de novo* review. The Fifth Circuit upheld the bankruptcy court's approval of the trustee's compromise with Farmers because it correctly found that the bankruptcy judge did not abuse his discretion. The bankruptcy court engaged in a thorough and careful review of the facts using the factors enumerated in *In re Jackson Brewing Co.* and, finding the compromise to be in the best interest of the estate, decided to approve it.[7]

4. The provisions of the "Bankruptcy Amendments and Federal Judgeship Act of 1984," 28 U.S.C.S. § 151 *et seq.*, are constitutional.

The Martins make the same arguments about the current bankruptcy laws that were made about the 1978 bankruptcy laws in *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.* back in 1982.[8] In *Northern Pipeline* the Supreme Court held that the "jurisdictional provision of the 1978 Bankruptcy Reform Act unconstitutionally delegated Article III judicial authority and power to the bankruptcy courts."[9] Congress' revision of the bankruptcy laws in the "Bankruptcy Amendments and Federal Judgeship Act of

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[6] *In re the Matter of AWECO, Inc.*, 725 F.2d 293, 297 (5th Cir. 1984) *cert. denied* 469 U.S. 880 (1984) citing *In re Jackson Brewing Co.*, 624 F.2d 599, 602-603 (5th Cir. 1980); *Matter of Walsh Const.*, 669 F.2d 1325, 1328 (9th Cir. 1982); *Matter of Ocobock*, 608 F.2d 1358, 1360 (10th Cir. 1979); *In re Albert Harris*, 313 F.2d 447, 449 (6th Cir. 1963).

[7] *In re Jackson Brewing Co.*, 624 F.2d 599, 602-603 (5th Cir. 1980).

[8] *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

[9] *In re Case*, 937 F.2d 1014, 1019 (5th Cir. 1991).

1984," 28 U.S.C.S. § 151 *et seq.*, modeled after the *Northern Pipeline* decision corrected this problem. Under the current law, a bankruptcy judge can only fully adjudicate a "core" proceeding as that is defined in non-exclusive terms in Section 157(b)(2).[10] With respect to "non-core" proceedings that are related to a bankruptcy case, a bankruptcy judge is restricted to conducting a preliminary hearing and submitting proposed findings of fact and conclusions of law to the district judge. Only the district judge may enter a final order or judgment.[11] If a party objects to the bankruptcy judge's findings or conclusions, they are reviewed *de novo* by the district judge.[12] This system has been found to be constitutional by numerous courts.[13] The Martins fail to explain how the changes made to the bankruptcy laws by Congress in the wake of *Northern Pipeline* fail to meet the requirements of Article III.

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[10] 28 U.S.C.S. § 157(b)(2) (Lexis 2007).

[11] 28 U.S.C.S. § 157(c) (Lexis 2007).

[12] Id.

[13] *In re Production Steel Inc.*, 48 B.R. 841 (M.D. Tenn. 1985); *In re Tom Carter Enterprises, Inc.*, 44 B.R. 605 (C.D. Cal. 1984); *In re WWG Industries*, 44 B.R. 287 (N.D. Ga. 1984); *In re Earle Industries, Inc.*, 71 B.R. 919 (Bankr. E.D. Pa. 1987); *In re Stephen W. Grosse*, P.C., 84 B.R. 377 (Bankr. D. Pa. 1988); *Carlton v. BAWW, Inc.*, 751 F.2d 781 (5th Cir. 1985); *Pate v. Hunt*, 136 B.R. 437 (Bankr. D. Tex. 1991); *In re Chase & Sanborn Corp.*, 51 B.R. 733 (Bankr. S.D. Fla. 1985); *In re Northwest Cinema Corp.*, 49 B.R. 479 (Bankr. E.D. Minn. 1985); *Storage Equities, Inc. v. Delisle*, 91 B.R. 616 (D. Ga. 1988); and *In re Lathrop*, 49 B.R. 885 (Bankr. D. Ill. 1985).

5. The Martins present no coherent basis for their claim that the "Federal Arbitration Act," the "Texas General Arbitration Act," or Article V of the Texas Constitution are unconstitutional.

Before filing for bankruptcy, the Martins sued Farmers and Sanderson in Texas state court. The state court ordered the Martins and Sanderson to participate in binding arbitration based upon the arbitration clause in their agreement. The cost of the arbitration proved too great so the Martins did not arbitrate their claims and instead nonsuited their case against both Farmers and Sanderson. The Martins never re-filed in state court. They did not get their jury trial. The Martins then filed for bankruptcy protection which, as explained above, caused the ownership of this cause of action against Farmers and Sanderson to change from the Martins to the bankruptcy estate.

The Martins argue that the "Federal Arbitration Act" and the "Texas General Arbitration Act" as well as Article V of the Texas Constitution are all unconstitutional because, according to them, these laws vest Texas judges and arbitrators with the same powers as federal Article III judges but fail to provide the Article III safeguards of life-tenure and salary security.

This argument is flawed for many reasons. First, the Martins ignore the fact that the state court judge did not order them to arbitrate their case against Farmers. The order applied only to the Martins and Sanderson. The Martins fail to show any impediment that prevented them from pursuing their claim in state court against Farmers. Second, the Martins also ignore the fact that neither the federal nor the Texas state arbitration act compels a party to present their case to an arbitrator instead of a judge.

Both Acts require that a party affirmatively choose arbitration in a contract or other written statement.[14] Third, in the interest of comity, this Court should not accept the Martins' request to pass upon the constitutionality of a Texas state statute or constitutional provision when no Texas state court has even had the opportunity to consider the Martin's argument. Fourth, Article III of the U.S. Constitution addresses the federal judiciary not the judiciary of the several states so Texas is under no constitutional obligation to adhere to these requirements.[15] And, Article III does not address or apply to arbitrators. Finally, since the Martins feel that their rights were infringed by the state court's decision that the contract they signed required them to arbitrate their case against Sanderson, the proper course of action would have been to appeal the state trial court's decision to a Texas appellate court. They failed to do this.

CONCLUSION

The Martins failed to preserve for appeal any of the constitutional arguments they make to this Court. They failed to present this Court with any coherent arguments in support of their claims that the "Bankruptcy Amendments and Federal Judgeship Act of 1984," the "Federal Arbitration Act," the "Texas General Arbitration Act," or Article V of the Texas Constitution are unconstitutional. None of the lower courts committed any error in this

[14] 9 U.S.C.S. §§ 2, 4 (Lexis 2007) and TEX. CIV. PRAC. & REM. CODE § 171.001 (Lexis 2007).

[15] U.S. CONST. amend. X.

matter. There is no conflict between the circuit courts as to any decisions made by the Fifth Circuit in this matter. And, there is no compelling reason to grant the Martins' Petition for Writ of Certiorari. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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Docket No. 06-1620

IN THE

Supreme Court of the United States

STEPHEN MARTIN and SUSAN MARTIN,
Petitioners

v.

SANDERSON FARMS, INC., JAMES STUDENSKY, and FARMERS STATE BANK,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENT IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Dated: August 1, 2007

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APPENDIX 1a-34a

A. Order of United States Bankruptcy Court for the Western District of Texas, Waco Division – Granting Amended Motion of Sanderson Farms, Inc. to Vacate and Alter another bankruptcy judge's action (from May 20, 2005 titled "*Findings of Fact and Conclusions Of Law On Chapter 7 Trustee's Motion To Compromise And Settle Controversy With Sanderson Farms, Inc. Pursuant To Bankruptcy Rule 9019 And Order Granting Said Motion*"). Dated and Filed July 12, 2007[1] 1a

B. Transcript of July 11, 2007 action affecting orders in perfected Writ – taken by a new bankruptcy judge *without* the Petitioners' consent. 5a

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[1] A new bankruptcy judge "carved out" and acted on part of the 5th Circuit's opinion over Petitioners' "running objection", even though the Writ already questions the constitutionality of law authorizing automatic referral of proceedings to non-Article III judges. This new action further exemplifies the *urgency* that this Court grant review of the Writ in the interest of justice.

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ADDITIONAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §157 provides in part:

§157(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

§157 (c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

§157(c)(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section **158** of this title.

§157(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating

organizations or activities affecting interstate commerce.

§157(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

28 U.S.C. §158(a) provides in part:

The district courts of the United States shall have jurisdiction to ... hear appeals with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section **157** of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

28 U.S.C. § 2075 provides in part:

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under title 11. Such rules shall not abridge, enlarge, or modify any substantive right.

28 U.S.C. § 2106 provides:

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

Supreme Court Rule 5.1 provides in part:

> To qualify for admission to the Bar of this Court, an applicant must have been admitted to practice in the highest court of a State ... for a period of at least three years immediately before the date of application; must not have been the subject of any adverse disciplinary action pronounced or in effect during that 3 year period; and must appear to the Court to be of good moral and professional character.

Supreme Court Rule 9.1 provides in part:

> An attorney seeking to file a document in this Court in a representative capacity must first be admitted to practice before this Court as provided in Rule 5.

Supreme Court Rule 30.4 provides in part:

> An application to extend the time to file any document or paper other than those specified in paragraph 3 of this Rule may be presented in the form of a letter to the Clerk setting out specific reasons why an extension of time is justified. The letter shall be served on all other parties as required by Rule 29. The application may be acted on by the Clerk in the first instance, and any party aggrieved by the Clerk's action may request that the application be submitted to a Justice or to the Court. The Clerk will report action under this paragraph to the Court as instructed.

Fed. R. Bankr. Proc. 8002(b) provides in part:

> If any party makes a timely motion of a type specified immediately below, the time for appeal for all parties runs from the entry of the order disposing of the last such motion outstanding. This provision applies to a timely motion:
> (1) to amend or make additional findings of fact under Rule 7052, whether or not granting the motion would alter the judgment;
> (2) to alter or amend the judgment under Rule 9023;
> (3) for a new trial under Rule 9023; or
> (4) for relief under Rule 9024 if the motion is filed no later than 10 days after the entry of judgment.

The Restatement (2nd) of Contracts, §90(1) provides:

> A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.

ARGUMENT

This exceptional and precedent-setting appeal contains argument of great importance to the formation of public policy, and seeks reversal of existing bankruptcy and arbitration law that empowers non-Article III judges with Article III authority. The facts of this case are proof positive that billion dollar poultry corporations and poultry lenders influence non-Article III judges to substitute past consideration for a new performance, and to then apply arbitration law to the new performance as a weapon to enforce unpaid labor.

The issue before this Court questions whether Congress had authority to enact specific statutes[1] to automatically funnel petitions of the bankrupt and poor away from life-tenured judges with salary security. In addition to abridging the 1st Amendment right to petition an Article III court and the 7th

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[1] Article V of the Texas Constitution has also been called into question – in that District and Supreme Court judges lack the life tenure and salary protection required by Art. III of the United States Constitution. Texas is subject to the U.S. Constitution. *See* Tex. Const. Art. I. Sec. 1. It is human nature for Texas judges, like all non-Article III judges, to be easily influenced by partisan recommendations and political powers. *See* the Federalist No. 79, at 472 (Alexander Hamilton): "In the general course of human nature, a power over a man's subsistence amounts to a power over his will."

> "The American colonists suffered greatly under judges controlled by King George III. They listed this grievance in the Declaration of Independence: 'He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.' Declaration of Independence para. 11 (U.S. 1776). The Framers made judicial independence a cornerstone of our judicial system." In re Clay, 35 F.3d 190 (5th Cir. 1984).

Amendment jury right, the statutes automatically refer petitioners to non-Article III judges before the consent clause in statute is even reached. Petitioners are non-attorney U.S. citizens residing in Texas.

Petitioners file this Supplement to update and notify this Court (pursuant to Rule 30.4)[2] that Petitioners were further aggrieved through a filing extension abused by the *pro hac vice* attorney for Sanderson Farms, Inc. (SFI). The due date for the SFI response was July 6, 2007.

1. Rather than file a timely writ response, on Friday, July 6, 2007 SFI served the Petitioners with a two-inch thick book of exhibits including a letter from the *pro hac vice* attorney[3] - stating that the exhibits would be "*proffered at trial by Sanderson Farms*" on July 11, 2007[4] before a new bankruptcy judge (Judge Robert McGuire). SFI seeks a bankruptcy judge order[5] that the 1998 investment

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[2] *See* Rule 30.4.

[3] The attorney who submitted the extension application was admitted to practice *pro hac vice* in the Bankruptcy Court for the Western District of Texas on November 9, 2004 – after returning to Texas from Colorado. *See* Rules 5.1 and 9.1.

[4] The new bankruptcy judge had already received notice that the Writ had been perfected and any bankruptcy actions bearing on the 5th Circuit opinion were stayed pending Supreme Court decision. The SFI revelation that Petitioners were to be defendants in a "trial" before this new bankruptcy judge in less than three business days was a great surprise to the Petitioners. *See* transcript of hearing, pages 9a -10a.

[5] Judge McGuire's action (substituting past consideration for a new performance over the Petitioners' objection) will be moot if this Court decides that 28 U.S.C. §157(a) is unconstitutional in that §157(a) automatically refers Title 11 petitions to bankruptcy judges before the consent clause for referral of individual proceedings in §157(c)(2) is even reached.

Contract (admitted into federal evidence on November 3, 2004)[6] is not a *real* contract, and that there was no contract between the parties other than part of a 1999 labor Agreement – which contains arbitration language and was initially submitted by SFI (on November 17, 2004) to the Chief Bankruptcy Judge, Larry E. Kelly. The findings and conclusions in the November 18, 2004 order (Writ App. C) and all subsequent orders in the Writ are based partly on the evidence of the 1998 investment Contract (which does not have arbitration language and includes SFI's express promise of investment income in return for custom barn construction).[7] *See* Appendix pages 1a - 4a, 16a, 17a, 21a, 22a, 28a, and 30a - 33a, and the Restatement (Second) of Contracts, §90(1). The 1998 investment Contract includes a federally guaranteed construction loan for the express promises of Sanderson Farms, Inc. to pay "37 cents per dozen hatching eggs" and "9

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[6] The SFI attorney was not admitted to practice *pro hac vice* on November 3, 2004 – when the chief bankruptcy judge admitted a copy of the 1998 investment Contract and other evidence submitted by the Martins. A copy of part of a 1999 labor Agreement and its "Payment Schedule" (later submitted by SFI and subsequently admitted by the chief bankruptcy judge) expressly promised additional income in return for a new performance under the 1999 labor Agreement.

[7] SFI disputes facts in the Fifth Circuit's opinion and influenced Judge McGuire to substitute the past consideration (of the 1998 investment Contract) for a new performance (requiring labor as a new performance in the 1999 labor Agreement). The Fifth Circuit's opinion states:

> "This potential cause of action arose from a series of agreements between Sanderson and Farmers State for the Martins to construct egg hatching barns for Sanderson with financing from Farmers State and for Susan Martin to work as a hatching egg producer."

cents per dozen commercial eggs" – for all broiler hatching eggs removed from the barns by SFI. The 1998 investment Contract and express letters offering the consideration are dated in 1998, are on Sanderson Farms, Inc. letterhead, itemize specific annual expenses totaling $26,700, an annual debt repayment of 58,000, a bank loan of $450,000 @ 8.5%-9% with a 15-year term, an annual "net income before tax" of 36,890, and a statement that "the value of litter as fertilizer and cattle feed may add $3,000 to $6,000 to annual returns.[8]

2. SFI influenced Judge McGuire to "carve out" part of the Fifth Circuit's decision and to "vacate[9]

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[8] SFI persistently describes the 1998 Contract (including their signed letters of inducement, itemized description of specific income, expenses, and loan terms, and the Federal Guarantee) as "*a marketing brochure only – it was not a contract.*" *See* transcript page 30a. These same express documents (admitted into evidence on November 3, 2004 along with copies of the federal guarantees) promise "a fair and profitable return on investment." *See* transcript pg 33a. The SFI *pro hac vice* attorney (though not admitted to practice until November 9, 2004) attended the November 3rd hearing and objected to the admittance of this evidence. The attorney seeks to sanction the Petitioners for arguing the admitted 1998 Contract evidence that is objectionable to SFI.

[9] Judge McGuire states his empowerment to "vacate" hinges on a statement in the 5th Circuit's opinion; however, the opinion does not remand the case to a bankruptcy judge, and bankruptcy rules do not preclude substantive rights including the 1st Amendment right to petition this Court. *See* 28 U.S.C. §2075. Also, Bankruptcy Rule 8002(b) does not authorize a bankruptcy judge to "vacate" *any* order; *See* 28 U.S.C. §2106:

> The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it.

and alter" the Chief Bankruptcy judge's relevant May 20, 2005 action titled, "Findings of Fact and Conclusions of Law on Chapter 7 Trustee's Motion to Compromise and Settle Controversy with Sanderson Farms, Inc. Pursuant to Bankruptcy Rule 9019 and Order Granting Said Motion." Before the May 20, 2005 bankruptcy judge action, Petitioners had properly appealed to the Fifth Circuit the April 23, 2005 district court's refusal to remove the automatic referral of the Title 11 petition to the bankruptcy judge. (See Pet. Writ App. F).[10] A decision by this Court favorable to the Petitioners would moot the May 20, 2005 bankruptcy action. In its April 23, 2005 order (denying Petitioners' 28 U.S.C. §157(d) motion and stay motion), the district court stated:

> "Appellants' attempted interlocutory appeal was properly dismissed, this Court properly denied any attempt to stay proceedings in the Bankruptcy Court, and there is no legal basis for

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[10] SFI attached the District Court orders in Writ App. B and F to their #179 amended "vacate and alter" pleading to seek non-Article III review or application of those orders. *See* pages 2a and 24a. The fact (noted in the Writ) that the 5th Circuit failed to review the Dist. Court order in Writ App. F – which denied the Petitioners' motion to remove the automatic referral of the case to the bankruptcy judge – gives an appearance that SFI was allowed to "pre-select" (before the 5th Circuit's opinion was rendered) orders it wanted the 5th Circuit to *not* review or take into consideration. In other words, influence allows billion dollar corporations to choose actions to keep from an Art. III court – then if this Court denies the Writ, the "pre-selected" (non-reviewed) district court orders are taken back to easily influenced non-Art. III judges for additional action.

withdrawing the reference from the Bankruptcy Court."[11]

3. Judge McGuire's new order (see App. A), titled "Order Granting Amended Motion of Sanderson Farms, Inc. And Sanderson Farms, Inc. (Production Division) To Vacate And Alter Compromise Judgment Entered May 20, 2005" states the source of his jurisdiction over the Writ and empowerment to "vacate and alter" the chief bankruptcy judge's May 20, 2005 action is the Fifth Circuit's March 14, 2007 "decision issued as a mandate"; however, the Fifth Circuit also issued a March 14, 2007 order denying the Petitioners motion for rehearing – making a Petition for a Writ of Certiorari the sole remedy available to the Petitioners. Subsequently, the Petitioners properly filed and perfected this Petition for Writ of Certiorari to the Fifth Circuit Court of Appeals. As for *empowerment* of a non-Article III judge to sit as an Article III court and vacate and alter the chief judge's action – where *that* action was made without consent for the

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[11] All Title 11 Petitioners are *automatically* refused access to district judges (pursuant to 28 U.S.C. §157(a) and §1334(b)) – effectively denying the right to give consent *before* referral of individual proceedings in their case. *See* 28 U.S.C. §157(c)(2) and (e)). Then, to "get out" of the bankruptcy court, petitioners (even post-discharge citizens) must file under §157(d) for consent from the district court. In this instant case, Petitioners' 28 U.S.C. §157(d) motion was denied and the 5th Circuit refused to review the appeal of this District Court order. *See* Pet. Writ App. F. An interlocutory appeal is not a viable remedy (*see* §158a) because it presumes that the Petitioner gave consent under §157(c)(2) and (e) before the referral of individual motions to the bankruptcy judge.

referral of the Rule 9019 motion from the District Court – *that is already the issue before this Court.*[12]

4. Judge McGuire's new order vacates and alters the May 20, 2005 action – where that action had itself been improperly granted *after* the Petitioners had already appealed (to the Fifth Circuit) the district court order (March 7, 2005) referring the underlying motion (filed by James Studensky, Respondent) to the bankruptcy judge *without Petitioners' consent.* (See Pet. Writ App. G):

> "It is further ORDERED that the Bankruptcy Court may proceed with a hearing on Trustee's Motion to Compromise Controversy with Sanderson Farms, Inc."[13]

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[12] Also at issue before this Court is arbitration law that by its nature automatically circumvents the Article III requirements of life-tenure and salary protection, and denies the individual citizen's jury right before a controversy is filed. *See* J. Story, Commentaries On The Constitution Of The U. S. 1757 (1833):

> "[I]t is a most important and valuable amendment, and places upon the high ground of constitutional right the inestimable privilege of a trial by jury in civil cases, ... which is conceded by all to be essential to political and civil liberty." *Id.* at 1762. All courts shall be open, and every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law. Tex. Const. Art. I Sec. 13. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. U.S. Const. 7th Amend.

[13] In other words, district judges are empowered under 28 U.S.C. §157(a) and 28 U.S.C. § 1334(b) to automatically refer motions invoking Title 11 to a bankruptcy judge before the consent requirements under §157 are even reached.

5. SFI and the Bank were both listed on the Petitioners' "creditor matrix", and were non-claimants of the Petitioners' bankruptcy estate. Debt related to the 1998 investment Contract (including the SFI pre-construction promise of investment income in return for custom barn construction) was also scheduled, and was never delinquent. The private potential causes of action were noticed on the bankruptcy petition, and the Trustee never "ripened" them. There was no underlying adversarial proceeding on file during bankruptcy. The Petitioners did all that was required by statute and were granted a discharge order in 2003.

Why do non-Article III judges "order and decree" the substitution of past consideration for a new performance and apply arbitration law to that new labor performance? Why were Rule 9019 motions referred to the bankruptcy judge without the Martins' consent, and why was mail delivery of the Martins' post-discharge investment income diverted in 2004 to the bankruptcy court without the Martins' consent?

The sole answer is simple. Judges who lack the life-tenure and salary protection requirements of Article III are easily influenced. The facts of this case are proof positive that the billion dollar corporations know they can buy legislation and influence judicial decisions. Petitioners under Title 11 and discharged citizens are denied access to Article III judges for vindication of wrongs committed against them privately. Access (of the poor and bankrupt) to Article III judges is blocked by statute and State Constitution – allowing powerful influences to continue unfettered to ravage the bankrupt and poor. Where is the justice in that?

CONCLUSION

For the foregoing reasons and argument, and for the reasons and argument set forth in the Petition For Writ of Certiorari To The Fifth Circuit, this Court should grant certiorari.

Respectfully submitted,

Susan G. Martin
Stephen C. Martin
2416 S. 13th St., Apt. 916
Temple, TX 76504
(254) 231-6309

Dated: August 1, 2007

APPENDIX A – ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE WESTERN DISTRICT OF TEXAS, WACO DIVISION GRANTING AMENDED MOTION OF SANDERSON FARMS, INC. AND SANDERSON FARMS, INC. (PRODUCTION DIVISION), TO VACATE AND ALTER: "FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CHAPTER 7 TRUSTEE'S MOTION TO COMPROMISE AND SETTLE CONTROVERSY WITH SANDERSON FARMS, INC. PURSUANT TO BANKRUPTCY RULE 9019 AND ORDER GRANTING SAID MOTION" ENTERED MAY 20, 2005

DATED AND FILED JULY 12, 2007

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

Case No. 03-61633
Chapter 7 Petition
In Re: Stephen Clyde Martin and
Susan Gayle Martin, Debtors

ORDER GRANTING AMENDED MOTION OF SANDERSON FARMS, INC. AND SANDERSON FARMS, INC. (PRODUCTION DIVISION) TO VACATE AND ALTER COMPROMISE JUDGMENT ENTERED MAY 20, 2005

Before the Court is the Amended Motion of Sanderson Farms, Inc. and Sanderson Farms, Inc. (Production Division) to Vacate and Alter

Appendix A

Compromise Judgment Entered May 20, 2005, said amended motion having been filed December 23, 2005 (Doc. #177). Debtors filed a Memorandum against this motion on January 3, 2006 (Doc. #178). Sanderson Farms, Inc. and Sanderson Farms, Inc. (Production Division) filed a Response to the Debtors' Memorandum on January 10, 2006 (Doc.#179), to which the Debtors filed an Amended Second Memorandum in opposition on January 11, 2006 (Doc. #181).

The Court held a hearing on July 11, 2007. This Court has jurisdiction to consider this pending motion to amend.[1] At the hearing, the Debtor Susan Martin and the Sanderson Farms entities appeared. Debtor Susan Martin testified as did Terry Thompson for the Sanderson Farms entities.

The Sanderson Farms entities ask the Court to correct certain information stated in a prior order filed May 20, 2005 (Doc. #158) and titled Findings of Fact and Conclusions of Law on Chapter 7 Trustee's Motion to Compromise and Settle Controversy with Sanderson Farms, Inc. Pursuant to Bankruptcy Rule 9019 and Order Granting Said Motion. The Sanderson Farms entities ask that the names of the contracting

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[1] The Fifth Circuit Court of Appeals, in its decision issued as mandate on March 14, 2007, specifically stated that, because Sanderson farms had filed a timely motion to amend the May 20, 2005 order, which motion was still pending, the Fifth Circuit did not have jurisdiction to consider an appeal of said order pursuant to Fed. R. Bankr. Proc. 8002(b). It dismissed the Martin's appeal of the May 20th order for lack of jurisdiction.

parties to the Hatching Egg Producer's Agreement be corrected to be Sanderson Farms, Inc. (Production Division), and not Sanderson Farms, Inc., and be corrected to be Susan G. Martin, not both the Stephen and Susan Martin. Also, the Sanderson Farms entities seek the corrected date of February19, 1999 for the Hatching Egg Producer's Agreement and not February 1998.

At the hearing, the Sanderson Farms entities' Exhibit 13 was admitted into evidence. Exhibit 13 is the Hatching Egg Producer's Agreement and clearly reflects that the parties to this contract are Sanderson Farms, Inc. (Production Division) and Susan G. Martin DBA Windy Acres Farm and that the date of the contract is February 19, 1999. Testimony of Terry Thompson showed that there was no other contract between the parties. Debtor Susan Martin did not present credible rebuttal testimony.

As such, the motion to vacate and alter the order approving the compromise and settlement with the Trustee and the Sanderson Farms entities (Doc. #177) has merit and should be granted. Based upon the findings of fact and conclusions of law stated above and on the record, it is therefore

ORDERED that the motion to vacate and alter compromise judgment is granted; thus, in the May 20, 2005 order (Doc. #158), all references to Sanderson Farms, Inc. are hereby altered to be Sanderson Farms, Inc. (Production Division). Further, in Doc. #158, the contracting parties to the Hatching Egg Producer's

Appendix A

Agreement are corrected to be Sanderson Farms, Inc. (Production Division) and Susan G. Martin. Also, in Doc. #158, the date of the Hatching Egg Producer's Agreement is corrected to be February 19, 1999.

IT IS HEREBY ADJUDGED and DECREED that the [foregoing] is SO ORDERED.

Dated: July 12, 2007

s/ Robert C. McGuire
ROBERT C. McGUIRE
United States Bankruptcy Judge

APPENDIX B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION

IN RE:	*	Case No. 03-61633
STEPHEN CLYDE MARTIN and SUSAN GAYLE MARTIN,	*	
Debtors.	*	July 11, 2007

BEFORE THE HONORABLE ROBERT C. McGUIRE BANKRUPTCY JUDGE

#81 – Motion for Rule 9011 Sanctions Against Debtors (20 Day Objection Language) Filed by Susan Hardie Jacks for Creditor Sanderson Farms, Inc. (Attachments: #(1) Exhibit A #(2) Exhibit B #(3) Exhibit C #(4) Exhibits D, E, F #(5) Exhibits G, H, I, J)

#177 – Amended Motion to Vacate Order Filed by Susan Hardie Jacks for Creditor Sanderson Farms, Inc. (Attachments: #(1) Exhibit A #(2) Exhibit A-1 #(3) Exhibit B #(4) Exhibits B-1 #(5) Proposed Order Granting Amended Motion to Vacate and Alter Judgment Entered May 20, 2005 Filed by Sanderson Farms, Inc. and Sanderson Farms, Inc. (Production Division)

Proceedings recorded by electronic sound recording, transcript produced by transcription service.

[2] APPEARANCES

APPEARING PRO SE
By: Ms. Susan Gayle Martin P.O. Box 1244
Cameron, Texas 76520
Appearing for the Debtors;

MEHAFFY & WEBER
By: Ms. Susan Hardie Jacks
One Allen Center
500 Dallas, Suite 1200
Houston, Texas 77002
Appearing for Creditor Sanderson Farms, Inc.

* * *

[3] INDEX

WITNESS FOR THE DEBTOR	Direct	Cross	Redirect	Recross
Susan Gayle Martin	19	26	28	
WITNESS FOR CREDITOR SANDERSON FARMS, INC				
Terry Lee Thompson	8	15	–	–
EXHIBITS			Offered	Received
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* * *

[4] THE COURT: Okay. Back to the Martin matter.

MS. MARTIN: Your Honor, if it please the Court, I'm Susan Martin, the Debtor. And I sent a written request to the Court for an official transcriber, to be

present so that I can get a copy of the record. And is that – Is there a transcriber present?

THE COURT: Yes.

MS. MARTIN: Okay. Thank you, sir.

And also, as you know, regarding this matter, there is a perfected appeal right now on this matter before the U.S. Supreme Court. And –

THE COURT: Let me – Let me interrupt for a moment.

MS. MARTIN: Sure.

THE COURT: It appears to me that the only matter that should be heard on this, this morning, is the motion for correction of the prior order, not on the – not the Rule 11 motion, because it looks to me like, since the appeal has been perfected, that that would be – should be taken up –

MS. MARTIN: Into consideration?

THE COURT: After the – After that's ruled on. But I do – It does appear to me that the motion [5] for correction would be appropriate for the Court to take up today, so I'm going to take that up.

MS. MARTIN: Okay, your Honor. And, so, I would like to present to the Court a running objection to the proceedings, –

THE COURT: It will be so noted.

MS. MARTIN: – just for the record.

THE COURT: So noted.

MS. MARTIN: Okay. Thank you, sir.

THE COURT: You may proceed.

MS. JACKS: Thank you, your Honor. Good morning. I'm Susan Jacks, here on behalf of Sanderson Farms, Inc., and Sanderson Farms, Inc., Production Division. Those are two separate companies.

Your Honor, we are here before the Court today to ask the Court to correct some items listed in the May 20, 2005, order that the Court entered approving a compromise between the trustee and Sanderson Farms. In that May 20, 2005, memorandum and order, there were three points that we would ask the Court to correct. They involve the parties who were – who were contracting parties concerning a hatching egg production business, and also the date of that contract.

Your Honor asked, when this hearing was set, that [6] we produce evidence, and we have a witness here from Sanderson Farms today to provide that testimony, if the Court would like, or I can make a proffer, whatever the Court's pleasure is.

THE COURT: It would be probably better to have the witness testify.

MS. JACKS: Very well, your Honor.

THE COURT: If the witness would stand, and please raise your right hand.

Do you swear the testimony you're about to give in the matter before the Court will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

MS. JACKS: And, your Honor, I've brought with me exhibit booklets and a witness list. If I may hand those up?

THE COURT: You may.

MS. JACKS: Thank you.

THE COURT: You may proceed. The witness should be seated over there.

MS. JACKS: Has he been sworn?

THE COURT: You weren't sworn yet, were you?

THE WITNESS: I was standing up there, raising my hand.

THE COURT: Okay. That's fine, then.

[7]You're sworn.

MS. JACKS: And, your Honor, may I help hand the witness one of those exhibit books?

MS. MARTIN: Your Honor, if it please the Court, I object – I was totally surprised, and –

MS. JACKS: Speak into the mic, please.

MS. MARTIN: I was –

COURTROOM DEPUTY: We need you speak into the mic, please.

MS. MARTIN: Okay. I was totally shocked, your Honor, whenever I received this.

THE COURT: If you would get to the mic, ma'am, please. Thank you. Okay.

MS. MARTIN: I was completely shocked whenever I received this Friday of last week, because who is on trial here? This indicates – And this is a letter from Ms. Jacks saying, "Enclosed is a copy of the exhibits to be proffered at trial by Sanderson Farms." We have –

THE COURT: Trial on – This is trial on the correction matter.

MS. MARTIN: Okay. We have never consented to be on trial for anything. And I wanted to make that point. We were totally shocked whenever we received this, because we were not prepared to come [8] here as defendants, your Honor.

THE COURT: To the extent that's an objection, it's overruled.

You may proceed.

MS. JACKS: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. JACKS:

Q. Mr. Thompson, will you please state your full name for the record?

A. Terry Lee Thompson.

Q. And who is your employer, sir?

A. Sanderson Farms, Inc.

Q. And how long have you worked in the Sanderson Farm companies?

A. Approximately 11 years, total.

Q. All right. Have you always worked for Sanderson Farms, Inc.?

A. No. I've worked for Sanderson Farms, Inc., Production Division, and Sanderson Farms, Inc., currently.

Q. All right. And please explain – And, sir, if you'll speak into the microphone just a little bit more.

A. I'm sorry.

Q. Thank you.

[9] Please explain the difference between Sanderson Farms, Inc., and Sanderson Farms Production Division.

A. Sanderson Farms, Inc., Production is a wholly owned subsidiary of Sanderson Farms, Inc., along with Sanderson Farms Production, Sanderson Farms Processing and Sanderson Farms Foods are three separate companies.

Q. So, Sanderson Farms Production Division is a wholly owned subsidiary of the parent company, Sanderson Farms, Inc.; is that correct?

A. That's correct.

Q. And for a while your employer was Sanderson Farms, Inc., Production Division, the subsidiary?

A. Yes.

Q. Okay. And during the time that you worked for Sanderson Farms Production Division, what were your job responsibilities?

A. I started out as a breeder supervisor, then a hatchery supervisor, then live hall manager, then production

manager, and then division manager at our Bryan location.

Q. Let me back up and ask if you'll explain for the record: Generally, what is the business of Sanderson Farms?

A. We – We raise birds from hatching eggs, we hatch [10] them, then we take them to farms that are raised – at contract producers that raise the birds, and then we slaughter the birds for processing and for sale.

Q. All right. And the divisions that you described earlier are three separate companies that are involved in those different processes; is that correct?

A. Correct.

Q. All right. You stated that you worked in the Bryan division of Sanderson Farms Production Division?

A. Yes.

Q. And was that from the beginning of your employment in 1996?

A. Yes.

Q. All right. And when did you leave Texas to go to work for Sanderson Farms, Inc.?

A. Approximately two years ago.

Q. Okay. Does Sanderson Farms Production Division engage independent contractors to assist it in its business operations?

A. I'm sorry. Can you say that one more time?

Q. Yes. Your employer, your previous employer, Sanderson Farms Production Division, –

A. Yes.

Q. – does it engage independent contractors –

A. Yes.

[11] Q. – to assist it in its business operations?

A. Yes, ma'am.

Q. And what do those independent contractors do?

A. We have independent contractors that raise pullets; then we have independent contractors that raise hatching egg producing hens; and then we have hatch – contract broiler production.

Q. Okay. And before we talk more about that, let me just ask you, what is your educational background, sir?

A. I have a Bachelor of Science degree in animal science.

Q. And from what institution did you receive that degree in animal science?

A. Stephen F. Austin, in Nacogdoches, Texas.

Q. And what year did you graduate from college?

A. 1992.

Q. During the time that you worked in the Bryan area as an employee of Sanderson Farms Production Division, did you come to meet Mrs. Susan Martin?

A. Yes.

Q. And was Mrs. Martin a hatching egg producer for Sanderson Farms Production Division?

A. Yes.

Q. Did Mrs. Martin enter into a written contract [12] with Sanderson Farms Production Division?

A. Yes.

Q. I direct your attention, sir, to the exhibit booklet in front of you, and ask you to turn to Tab 13.

MS. MARTIN: Your Honor, I specifically object to this. And I have a document here with me that shows that this is not the document that I signed.

MS. JACKS: May I proceed, your Honor?

THE COURT: You may proceed.

MS. JACKS: Thank you.

Q. (By Ms. Jacks) Mr. Thompson, have you had a chance to take a look at the document marked as P-13?

A. Yes.

Q. Is this the hatching egg producer's agreement between Sanderson Farms Production Division and Ms. Susan G. Martin?

A. Yes.

Q. Have you reviewed the original contract that is the hatching egg producer's agreement between Sanderson Farms, Inc., Production Division and Susan G. Martin?

A. Yes, ma'am.

Q. And when did you do that?

[13] A. Yesterday.

Q. And where is that document located?

A. At our Bryan, Texas, facility, production facility.

Q. So, in your – in the offices of Sanderson Farms Production Division in Bryan, Texas?

A. Yes, ma'am.

Q. And have you compared the original against the copy that you have before you?

A. Yes, ma'am.

Q. And is it your testimony that this copy is a true and accurate copy of the original document that you have in the files of Sanderson Farms Production Division?

A. Yes, ma'am.

Q. Is it the custom of Sanderson Farms Production Division to maintain the original contracts in its offices?

A. Yes, ma'am.

Q. I'll ask you to take a look at the last page of Exhibit P-13. Do you see the signature block, sir?

A. Yes, ma'am.

Q. And the signature of Larry Ryals, whose title is breeder/hatchery manager, do you recognize that signature as Mr. Ryals's signature?

[14] A. Yes, ma'am.

Q. And he's signing on behalf of Sanderson Farms, Inc., Production Division; correct?

A. Yes, ma'am.

Q. And who is the grower under this contract?

A. Ms. Susan Martin.

Q. And if you'll turn back to Page 1 of Exhibit P-13: at the top of the page, it states, "This agreement made and entered into as of the 19 day of February 1999, between Sanderson Farms, Inc., Production Division and Susan G. Martin, hereinafter called 'the grower.'"

Is that your understanding of who the parties are to this contract, Sanderson Farms, Inc., Production Division and Mrs. Martin?

A. Yes.

Q. Thank you.

MS. JACKS: Your Honor, we offer Exhibit P-13.

THE COURT: P-13 will be admitted.

MS. JACKS: Thank you, sir.

Q. (By Ms. Jacks) Mr. Thompson, are there any other hatching egg producer contracts between Sanderson Farms, Inc., and Mrs. Martin?

A. No, ma'am.

Q. Are there any other hatching egg producer contracts between Sanderson Farms, Inc., or Sanderson Farms Production Division and Mr. Martin?

A. No, ma'am.

MS. JACKS: We pass the witness, your Honor.

THE COURT: Any questions of this witness?

MS. MARTIN: Yes, your Honor. Thank you, your Honor.

CROSS-EXAMINATION

BY MS. MARTIN:

Q. If I may call you Randy?

A. I'm Terry.

Q. Terry? Okay.

You said that – or you – you testified under oath that this hatching egg producer's agreement that is in Exhibit 13 says that this is a contract between Susan G. Martin and Sanderson Farms, Inc., Production Division; is that correct?

A. Yes, ma'am.

Q. However, the exhibit behind Tab 13 actually says, "This is an agreement between Sanderson Farms, Inc., Production Division, hereinafter called 'Sanderson,' and Susan G. Martin, herein . . . " Right below that, does it have typed in on it "d/b/a Windy Acres Farm, hereinafter called 'the grower' "? Isn't that the [16] truth?

A. Yes, ma'am, that's what it says.

Q. That's what mine says, too.

MS. MARTIN: Now, your Honor, I would like to present to you that this is not what we signed.

THE COURT: Do you have any further questions, ma'am? Ma'am, do you have any further questions of this witness?

MS. MARTIN: Yes, your Honor.

THE COURT: Well, finish your questions.

MS. MARTIN: Okay. Thank you, sir.

Okay. Your Honor, I would like to put before the witness a document filed in this bankruptcy court on November 29th, –

THE COURT: Okay. Show it to counsel.

MS. MARTIN: – 2004.

THE COURT: Show it to counsel first.

MS. JACKS: Your Honor, Mrs. Martin did not produce – or did not present any exhibits in accordance with the local rules; she didn't provide them to me in advance of this hearing. So, I object to the presentation of anything that may be considered or offered as an exhibit. Some of these matters are pleadings, but to the extent that she offers them as exhibits or wants to show them to the witness, she's [17] not complied with the local rules.

MS. MARTIN: Your Honor, what I have to say is that I did not receive Mrs. Jacks' book of exhibits indicating that I was going to be on trial here today until Friday. And this is a filing that was entered into this Court on November 29th, 2004.

THE COURT: All right. Let me see what you – Let me – Hand it up here for a minute; let me take a quick look at it.

(Pause.)

THE COURT: Okay. Now, this is styled as Debtors' Response to Sanderson Farms' Motion for Sanctions; is that what it is?

MS. MARTIN: Yes, your Honor.

THE COURT: Okay. I'll – Apparently, it's part of the record already, since it's been filed, so I don't – I'll overrule the objection.

MS. MARTIN: Thank you, your Honor.

THE COURT: Let's move along. This should be a short matter this morning.

MS. MARTIN: Okay. I'm sorry.

Okay. If I may approach the witness, your Honor?

THE COURT: You may. You may – Everybody can approach the witnesses without asking.

MS. MARTIN: Thank you, sir.

[18] Q. (By Ms. Martin) If I may, may I get you to read this part of this exhibit?

A. Debtors' Exhibit P-85? It says, "Excerpts of the statement made by the SFI Bryan division manager Randy Perez under oath at hearing on August 8th, 2002, in the State District Court of Milam County, Texas, recorded beginning at Line 23 of the certified transcript."

Continue reading?

Q. Yes. Please.

MS. JACKS: Your Honor, I object to the attempt to solicit testimony from another proceeding through this witness. He has no knowledge, whatsoever.

THE COURT: Sustained. Objection sustained.

MS. MARTIN: Okay. Okay. Thank you, your Honor.

Since – Since I filed it, can I read it?

THE COURT: Not at this time. We're not into argument yet.

MS. MARTIN: Okay. Okay. Thank you, your Honor.

Then I have no further questions. Thank you.

THE COURT: Any redirect?

MS. JACKS: No, your Honor.

[19] THE COURT: The witness may step down.

Any further testimony at this point?

MS. JACKS: Not from the Movant, your Honor.

THE COURT: All right. From the Respondent?

MS. MARTIN: May I testify?

THE COURT: You may. If you want to take the stand. Have you been sworn yet, or not?

MS. MARTIN: Yes, sir.

THE COURT: All right.

MS. MARTIN: I have.

THE COURT: If you'll take the stand

MS. MARTIN: Thank you, your Honor.

DIRECT EXAMINATION (NARRATIVE)

MS. MARTIN: If I may, I would like to read this portion of the transcript that took place at the Milam – the state hearing on this matter, in which Sanderson Farms testifies, under oath, that – And if I might read it? It was attached to this exhibit, which was filed, and has been available to Sanderson Farms and Sanderson Farms' attorney since November 29th, 2004.

MS. JACKS: Your Honor, I object to this attempt. Again, this is the Debtors' attempt to produce evidence in the form of a transcript. None of this has been presented in advance. I don't even know [20] what this transcript is. I – There's no authenticated copy of the transcript. For all I know, this is a mischaracterization. It – There's no authenticity here. So, –

THE COURT: Okay. Sustained, at this point.

MS. MARTIN: Okay. Your Honor, I'm having difficulty with my papers.

And the point – Okay. The point that I want to make is that this Exhibit Number 13 has been presented to this Court by Sanderson Farms, saying and alleging that this is an agreement between only me and Sanderson Farms. And when, in fact, –

THE COURT: You understand, ma'am, when you sign something as a d/b/a, it's the same as if you sign it individually? Do you understand that?

MS. MARTIN: But what I'm saying, sir, is that I did not sign this as a d/b/a. I did not sign – Whenever I signed this document, it was not filled in "d/b/a Windy Acres Farm." This was typed in after the fact, on admission of

Sanderson Farms, that they typed it in after the fact, you know, at a later time, after it had already been fully executed. And, for that reason, the state court did not accept this into admission. And Sanderson Farms apparently – This gives – This brings my husband into this labor [21] agreement, and my husband was not part of this labor agreement.

And, you know, for that reason, I file an objection. This is not what I signed. And the state court agreed with me. This is not what – what I was told and directed by the state court to even file on application to the American Arbitration Association. This is not what I filed, and I want to stress that point.

At this time, or during argument, would that be the appropriate time for me to present the other documents?

THE COURT: You're going to have to decide how to do your own case. But it's – Normally, if you're trying to get into evidence documents, you have to get them through testimony rather than through argument.

But this is a hearing that shouldn't take over 15 minutes, and it's already taken over that. So . . .

MS. MARTIN: Yes. Well, other than to say that this is not what we – The basis of their argument is that this is what I signed, and this is not what I signed, your Honor. And in the order that I received from you, if I may step down to my chair, and –

[22] THE COURT: You may.

MS. MARTIN: – get that order?

Okay. The initial order, your Honor, states that I'm to bring documents, and that we will –

THE COURT: What initial order are you talking about?

MS. MARTIN: It's an order dated April 18th, 2007.

And in the order you said that this hearing is based on the live proceedings, or the live motions, the live filings, and referred specifically to – Let me see here. Referred specifically to Documents Number 177, 178, 179 and Document Number 181, filed in this Court. And so –

And then Sanderson Farms' attorney, Ms. Jacks, called me. And whereas this order, dated April the 18th, tells me to be sure and bring documents, Sanderson Farms called me and said that, you know, in so many words, that if I come and bring documents, that the sanction motion will be considered. And –

THE COURT: As I told you, the sanctions motion isn't being taken up today.

MS. MARTIN: Okay. Thank you, sir.

Okay. And, so, I came with that in mind. But, at the same time, I received this – these exhibits [23] that's titled primarily that I am going to be sanctioned because I'm on trial here.

And so anyway – And Documents 177, which is titled Amended Motion of Sanderson Farms, Inc., and Sanderson Farms, Inc., Production Division to vacate and alter compromise judgment entered May the 20th, 2005. In that, they have attached an Exhibit A, which, up at the top

of it, it says, "This agreement, made and entered into as of the 19th day of February 1999," or 1990 blank, okay, "by and between Sanderson Farms, Inc., Production Division, hereinafter called 'Sanderson' and Susan G. Martin, hereinafter called 'the grower,' d/b/a Windy Acres Farm."

And they have this typed in as an exhibit so that it does not show the difference in type whenever they typed in "d/b/a Windy Acres Farm" on the actual document that they presented. Then they have attached to that a copy of that document, itself, which does show the difference in type; "d/b/a Windy Acres Farm" is in different type print.

Okay. Also attached to that, they have a civil docket, or a docket, a copy of a docket from the district court that was quite lengthy. And that Number 78, then, we filed appellants' memorandum regarding USBC Number 177, a post-judgment motion by [24] Sanderson Farms, Inc., moving the bankruptcy court to vacate and then alter the findings, that 5/20/05 order that regranted the trustee's post-judgment Rule 9019 motion, USBC Number 110. Okay? And we filed a memorandum saying that –

THE COURT: I think you're getting into argument. I'm not sure where you're going with this.

MS. MARTIN: Okay.

THE COURT: Finish your – Finish your testimony.

MS. MARTIN: Okay. Then Sanderson Farms filed a response to – in Number 179. Attached to that is Exhibit A, order of the United States District Court, which is down at – filed April 25th, 2005. This order, sir, of the district court, is in the petition for a writ of certiorari

which has been adopted at the U.S. Supreme Court, and the writ is Appendix F. Okay?

Then Sanderson Farms has Exhibit B attached to this live pleading, the same live pleading, filed April 25th, 2005. It's a – It's a memorandum, opinion and order of the district court. This Exhibit B, sir, in the live pleading that is supposed to be discussed today, is in the writ as Appendix B.

Okay. And then in – I filed a response, [25] appellant's second memorandum to the bankruptcy court, which is the live pleading that's supposed to be being discussed today, filed as a Number 181 in this Court. We go through various memorandums, or various citations, your Honor, all the way from the U.S. Supreme Court to other districts, saying that the jurisdiction of the bankruptcy court, it is both mandatory and jurisdictional, according to the U.S. Supreme Court. And whenever we file an appeal from the bankruptcy court to the district court, it says that the –

THE COURT: Ma'am, the Fifth Circuit has already ruled that this matter wasn't a proper thing for appeal. So . . .

MS. MARTIN: Yes. And so –

THE COURT: All right. I'm going to cut you off at this point. You've – Your testimony is finished, since you've not – you don't care to offer testimony. All you're doing is reciting from pleadings. So . . .

You may step down.

MS. MARTIN: Okay. Thank you, your Honor.

MS. JACKS: Your Honor, may I ask Mrs. Martin a couple of questions?

THE COURT: Yes.

[26] MS. JACKS: Thank you.

CROSS-EXAMINATION

BY MS. JACKS:

Q. Mrs. Martin, will you please refer to Exhibit P-13 in the exhibit book before you? And I'll direct your attention to the last page of that exhibit. It's the page numbered 8 at the bottom of the page.

Are you there, ma'am?

A. Yes.

Q. Is that your signature on Page 8?

A. Yes, it is.

Q. All right. And I would also ask you to turn to Tab 11 in the exhibit book.

A. Okay.

Q. Do you recognize the first page of Exhibit 11 as the voluntary petition that you filed when you commenced this bankruptcy case?

A. I believe it is.

Q. All right. And I would then ask you to turn to the very back of the exhibit, four pages from the back.

A. I think I'm there.

Q. And do you recognize this as the statement of financial affairs that you filed when you commenced this bankruptcy case, or as a – as part of it?

[27] A. What does it say up at the top of the page?

Q. Let me help you by directing your attention to the page that has Number 17 at the top.

A. Okay.

Q. If you'll look at the paragraph numbered 18, requesting information about the Debtors' businesses. Do you see where you have listed a beginning date of a contract with Susan Martin, Windy Acres Farm, and the nature of the business as egg production?

A. Of the labor agreement. Yes.

Q. Well, and do you see where you've got beginning and ending dates, February 15, 1999?

A. Right. Which –

Q. Is that – Is that the correct –

A. That's what this says.

Q. And you signed this document on the next page, did you not?

A. Yes.

Q. And you declared under penalty of perjury that this was –

A. Uh-huh. Yes.

Q. – that this information that you provided to the Court was accurate?

A. Right.

Q. All right.

[28] MS. JACKS: No further questions, your Honor.

MS. MARTIN: Okay. Your Honor, may I say one thing regarding this?

THE COURT: Yes. One thing.

MS. MARTIN: Thank you.

REDIRECT EXAMINATION (NARRATIVE)

MS. MARTIN: This was referring to the labor agreement that was between only me and Sanderson Farms. This is the labor agreement. This was not the 1998 investment contract.

THE COURT: Okay. Anything further?

MS. MARTIN: I guess not, your Honor.

THE COURT: You may step – You may step down.

MS. MARTIN: Thank you, sir.

THE COURT: Okay. All sides rest and close on evidence?

MS. JACKS: Yes, your Honor.

THE COURT: All right.

MS. MARTIN: Yes, your Honor.

THE COURT: Okay. Any short argument desired?

MS. JACKS: If – If I may, your Honor. Thank you.

[29] Very briefly, your Honor, we are here just to ask for a correction of the Court's May 20, 2005, findings of fact and conclusions of law by which the Court approved the compromise between the Chapter 7 trustee and Sanderson Farms, Inc. The compromise called for a settlement between any causes of action that the – or on any causes of action that the estate might have had against Sanderson Farms, Inc., and all of its affiliates, including Production Division.

The Court's findings of fact and conclusions of law contained some background factual statements, and a couple of other statements throughout the – throughout the findings and conclusions that we ask be corrected. And those are that the contract was a February 19, 1999, contract, not a February 1998 contract; that the contract was between Mrs. Martin only, not Mr. and Mrs. Martin; and that the other contracting party was Sanderson Farms, Inc., Production Division, and not Sanderson Farms, Inc., the parent company. Plaintiff – Or, excuse me. The Movant's Exhibit P-13 amply supports that, your Honor.

THE COURT: Is there any significance in your mind between the date of the statement of financial affairs, showing the contract beginning on the 15th, and the 13 – the Exhibit 13 showing it's [30] the 19th?

MS. JACKS: I don't think so, your Honor. That may have been a typographical error or the – just by a few days. The significance – And I know the Court is new to

this proceeding, but Mrs. Martin alluded to this somewhat. She has previously argued that a document that was handed to her, which we have explained was a marketing brochure only – it was not a contract – she has – she has argued that that document is a contract, and that is a 1998 contract – she called it a labor agreement – between her and Sanderson Farms, Inc. There's no evidence in the record of such a contract. And the significance is the distinction between a 1998 document and a 1999 document.

THE COURT: Okay.

MS. JACKS: Thank you, sir.

THE COURT: Ms. Martin? You're going to be limited to five minutes. So . . .

MS. MARTIN: Your Honor, as you – since you, apparently, took a look at the Fifth Circuit Court's decision, you should have been able to read, I'm sure you noticed, that even the Fifth Circuit referred to a series of agreements, a series of contracts, between us and Farmers State Bank and Sanderson Farms, Inc. Now, in 1998, whenever we [31] engaged in the contract which we have been referred tc (sic) – referring to as the 1998 preconstruction investment contract, that involved Sanderson Farms, Farmers State Bank and me and my husband; that involved all four parties. Even the Fifth Circuit's opinion acknowledges that there are multiple contracts.

Now, after the fact, after – And this was a contract. At that time, the 1999 labor agreement did not even exist, and we were not even qualified or considered for a loan based on a 1999 labor agreement They are obviously different. In – On November the 3rd, 2004, I submitted –

me and my husband submitted exhibits to the bankruptcy court which were admitted. And in that, yes, it does have a copy of what we are referring to as the 1998 pre-construction investment contract. And it does involve commitments, signed letters, and such, from Sanderson Farms, that they will provide an income. Up at the top – Well, along with their signature. And let me turn to that in the exhibit book that was admitted into the Court, and which Sanderson Farms has made copies out of it.

MS. JACKS: Your Honor, I object. And the reason is that the exhibit book to which Mrs. Martin refers was never admitted as against Sanderson Farms.

[32] There were several hearings conducted at that time. And I specifically asked Judge Kelly to clarify for the record that the exhibits that were admitted by Mrs. Martin pertained to –

THE COURT: You mean offered by her?

MS. JACKS: Yes. Yes. They were offered, excuse me. They were offered by her, and admitted by the bankruptcy court, concerning her objection to the compromise with Farmers State Bank. They had nothing to do with the hearing relating to Sanderson Farms. And the Court's findings from that hearing reflect that. So, Mrs. Martin is attempting to produce today exhibits from another hearing that Sanderson Farms was not a party to.

MS. MARTIN: And, your Honor, Sanderson Farms –

THE COURT: Overruled, at this point.

MS. MARTIN: Yes.

THE COURT: You have two minutes left.

MS. MARTIN: Okay. Sir, this is a valid contract. Even though it doesn't include anything we signed, it says I – on Page – Or, this is a Plaintiff exhibit, or Exhibit 2. "Dear Mr. and Mrs. Martin, please consider this as notification of commitment from Sanderson Farms. Our plans call for [33] your farm to place hens during the month of September 1998. Due to the amount of time you will have for the construction period, your site preparation, road construction will need to be complete as soon as possible." It's signed, "Sincerely, Kevin Crook, division manager; Larry Ryals, breeder/hatchery manager."

On the next page, there is another letter – a signed letter of commitment. And these were all used, sir, in the appraisal that was done for the bank, to finance the construction. "Please consider this as notification of a commitment. Our plans call for your farm to place hens during the month of February 1999. Complete the construction as soon as possible." Signed, Kevin Crook, division manager, and Larry Ryals, breeder/hatchery manager.

Then the next page. It says –

MS. JACKS: Your Honor, I object.

Excuse me.

These are not properly authenticated documents. The witness – She's trying – Mrs. Martin is trying to testify, as a witness, about documents that have not been introduced into evidence.

THE COURT: Well, we're in the argument stage now. So, I agree with you, but she's only got a [34] half minute left, so I'm going to . . .

MS. MARTIN: Okay. And in this letter, it says, "As we look forward to the addition of a second shift to our processing plant in 1998, we believe that our contract payments will continue to provide our growers with a fair and profitable return on investment." Signed, Bud West, director of production, Kevin Crook, division manager, and Larry Ryals, breeder/hatchery manager.

Then it – on the next page it says, up at the top, "Hatching Egg Producer Contract," your Honor. And these were documents that induced us into making the investment. And – And, so, for that reason, you, Honor, we – we relied on these letters, and we made the commitment, we made the financial investment, to our detriment. And, so, for that reason, your Honor, according to the second of contracts, this is a contract. And – Thank you.

THE COURT: Ms. Martin, your argument's finished. So . . .

MS. MARTIN: Thank you, sir.

THE COURT: You may step down.

It should be recalled that the Martins did not exempt the cause of action against Sanderson Farms or any of its entities; only the trustee handled it. And [35] it is the order on the trustee's motion to compromise and settle with Sanderson Farms that is asked to be corrected.

The motion of Sanderson Farms, Inc., and Sanderson Farms, Inc., Production Division is granted and found to

be a valid correction of the record. We'll do the form of the order arising from this hearing.

Anything further from either side?

(No audible response.)

THE COURT: Okay. We stand adjourned on this matter.

MS. JACKS: Thank you, your Honor.

* * *

I, Court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Darla Messina
Signature of Approved Transcriber

7-13-07
Date

Darla Messina
Typed or Printed Name

(5)

Docket No. 06-1620

IN THE

Supreme Court of the United States

STEPHEN MARTIN and SUSAN MARTIN,
Petitioners

v.

SANDERSON FARMS, INC., JAMES STUDENSKY, and FARMERS STATE BANK,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Certified Fed. R. App. P. 44(a) and (b) challenges that raise a single question have been presented:

Whether 28 U.S.C. §§151, 157, 1334 (made bankruptcy courts units of the Federal District Courts); the Federal Arbitration Act (FAA) and the Texas General Arbitration Act (TGAA); and Article V of the Texas Constitution – are all similarly unconstitutional in that Congress lacks constitutional authority to confer Article III powers on judges who lack the life tenure and salary security of Article III judges.

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The Federalist No.79, at 472 (Alexander Hamilton): "*In the general course of human nature, a power over a man's subsistence amounts to a power over his will.*" 1

ARGUMENT

The issue before this Court questions whether Congress had authority to enact specific statutes[1] to automatically funnel petitions of the bankrupt, poor, and working-class citizens away from life-tenured judges with salary security – effectively establishing a separate and unequal access to justice policy. In addition to abridging the 1st Amendment right to petition an Article III court and the 7th Amendment jury right, the statutes automatically refer petitioners to non-Article III judges before the consent clause in statute is even reached. This exceptional and precedent-setting appeal affords the Justices of this Court a once-in-a-lifetime opportunity to review novel argument with facts based on the very heart of why judicial independence *must* be maintained (for both federal *and* state judges) as required by Article III – which makes no distinction between federal and state judges in the Compensation Clause:

> "The judges, both of the supreme and inferior courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

This Court's opinions make no distinction between federal and state judges under the Compensation Clause; however, legal reporting services add that distinction. *See*

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[1] Article V of the Texas Constitution has also been called into question – in that state District and Supreme Court judges lack the life tenure and salary protection required by Art. III of the United States Constitution. It is human nature for Texas judges, like all non-Article III judges, to be easily influenced by partisan recommendations and political powers. *See* the Federalist No. 79, at 472 (Alexander Hamilton): "In the general course of human nature, a power over a man's subsistence amounts to a power over his will."

Supreme Court of the United States v. Hatter, 532 U.S. 557 (2001) in which headnote five states:

> "Under Compensation Clause, which guarantees that compensation of federal judges shall not be diminished during their continuance in office, legislature cannot directly reduce judicial salaries even as part of an equitable effort to reduce all Government salaries;" however, this Court's opinion actually states, "We concede that this Court has held that the Legislature cannot directly reduce judicial salaries even as part of an equitable effort to reduce all Government salaries."

Obviously, just as federal judicial independence must be maintained through life-time appointments and salary protection – so must state judicial independence be likewise maintained.[2] The Martins stress this point because just as the aforementioned headnote adds Article III distinction between federal and state judges to this Court's opinion, the response of Sanderson Farms, Inc. (SFI) argues,

> "Nor does Article III of the U.S. Constitution require that state judges have the same judicial 'security' of life-time appointment and salary protection as do federal judges. That article addresses the 'judicial power of the United States,' not of the individual states. The U.S. Constitution reserved for the states or to the people those powers

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[2] Respondents write the Martins' complain the state judge acted improperly or unconstitutionally. The Martins have nothing personal against the state judge other than the fact that the state judge is representative of judges in thirty-eight other states with non-life tenured judges – and where subsequent to *Erie*, the common law being created by these easily- influenced state judges is used as the deciding factor in federal diversity cases. The Article III diversity requirement is based on access to life-tenured judges with salary security, so in those states that lack life-tenured judges, the citizens should not be held to diversity legislation limiting access to only the state's unequal judicial forum.

> not delegated to the United States." (SFI response p.11 – referencing the 10th Amendment to the U.S. Constitution).

This argument of SFI fails for several reasons. In the eyes of our Constitutional forefathers, a judge is a judge – with no Article III distinction as to federal vs state judges – so that even the state judicial branch would not have to be dependent upon the good graces of the two political branches of government for their continued upkeep. Also, the Fifth Circuit citing *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), stated:

> "The American colonists suffered greatly under judges controlled by King George III. They listed this grievance in the Declaration of Independence: 'He has made judges dependent on his will alone, for the tenure of their offices, and the amount and payment of their salaries.' Declaration of Independence para. 11 (U.S. 1776). The Framers made judicial independence a cornerstone of our judicial system." *In re Clay*, 35 F.3d 190 (5th Cir. 1984).

Obviously, the forefathers had the judges of the individual States in mind when they proposed Article III's Compensation Clause. The 10th Amendment did *not* give the State of Texas authority to retract life-time appointment and salary security guarantees granted to judges under Article III as "a power not delegated to the United States." Indubitably, the judicial "power" had already been delegated to "judges" *before* the 10th Amendment came along. The People of Texas (including the political branches) have agreed to make and keep the Texas Constitution and laws subject to the U.S. Constitution and laws of the U.S. – not the other way around:

> *See* Tex. Const. Art. I. Sec. 1; *McCulloch v. Maryland*, 17 U.S. 316 (1819): "The U.S. Constitution and the laws made in pursuance thereof are supreme; they

> control the constitution and laws of the respective states and cannot be controlled by them." *United States v. Will*, 449 U.S. 200, 217-218 (1980): "A Judiciary free from control by the Executive and Legislature is essential if there is a right to have claims decided by judges who are free from potential domination by other branches of government."; *Marbury v. Madison*, 5 U.S. 137 (1803): "An act of the legislature, repugnant to the constitution, is void."

The responses state the Martins should have taken various actions five years ago in the state court, and disagree with each other on which parties were ordered by the state to arbitrate (*see* Writ Appendix D for the answer to the Respondents' apparent confusion); however, the Respondents seem to rely on the bankruptcy judge's expansion of the parties to the state's arbitration order. A year after discharge, the bankruptcy judge opened the state nonsuit order to the benefit of the Respondents in this appeal, and expanded the parties to the state's arbitration order. The failure of SFI and the Bank to object combined with the fact that their attorneys filed signed pleadings encouraging action to their benefit, acknowledged anew the Martins' standing and rights. Under Texas law, an acknowledgment operates as a new obligation, rather than as a mere revival of prior debt or obligation.[3]

The Respondents lay the major part of their opposition to the Petition for Writ on argument that the Martins lack standing and were required to raise the constitutional issues in the bankruptcy and district courts or in the state court

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[3] "An acknowledgment under Texas law must: (1) be in writing and signed by the party to be charged; (2) contain an unequivocal acknowledgment of ... the existence of the particular obligation; and (3) refer to the obligation and express a willingness to honor that obligation, Tex. Civ. Prac. & Rem. Code § 16.065; *In re Vineyard Bay Development Co., Inc.*, 132 F.3d 269, 271 (5th Cir. 1998).

five years ago. First, both the Fifth Circuit and the District Court left intact the fact that the Martins are "aggrieved". [4] (Writ pg. 3a and 10a).

Secondly, the words of Federal Rule of Appellate Procedure 44 expressly state:

> "The questioning party must give written notice to the circuit clerk immediately upon the filing of the record *or as soon as the question is raised in the court of appeals*."

Obviously, F.R.A.P. 44 neither prohibits a party from raising a question in the court of appeals, nor makes it mandatory that the question must be raised in the district court or to its adjunct. The Bank cites old law pre-dating the enactment of the Federal Rules of Appellate Procedure as the basis for its argument that this Court has a "settled practice to consider on appeal only those questions addressed in the lower courts." (Bank's response p. 3). While SFI does cite newer common law – encouraging this Court to deny review based on argument that the Martins should have raised the constitutional challenge in the bankruptcy court – the fact still remains that the Martins invoked F.R.A.P. 44 as allowed in the Fifth Circuit, and both the Bank and SFI agree that the questions were raised, argued, and opposed in the Fifth Circuit briefs.

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[4] According to Black's Law Dictionary, an aggrieved party is: "a party whose personal, pecuniary, or property rights have been adversely affected by another person's actions or by a court's decree or judgment." Black's Law Dictionary, Abridged Seventh Edition, copyright 2000. "A litigant qualifies as a person aggrieved if the order diminishes his property, increases his burdens, or impairs his rights. *In re San Juan Hotel,* 809 F.2d 151, 154 (1st Cir. 1987); "Standing: A party's right to seek judicial enforcement of a right. To have standing in federal court, a plaintiff must show that the challenged conduct has caused the plaintiff actual injury, and that the interest sought to be protected is within the zone of interests meant to be regulated by the constitutional guarantee in question." Black's Law Dictionary

Arbitration Legislation Is Unconstitutional In That It Abridges The Individual Workers Jury Right And Access To Life-Tenured Judges

The Respondents agree that the Federal Arbitration Act involves arbitrators who "receive their adjudicative powers contractually". (SFI response p. 11). SFI fails to mention their influence persuaded the state district judge and the bankruptcy judge to knowingly order arbitration under a unilateral labor agreement. *See* Writ pg. 20a. The FAA was first enacted in 1925 during the *Lochner* era – a time when "liberty of contract" was a fundamental part of legal doctrine – *Lochner v. New York*, 198 U.S. 45 (1905); however, the *Lochner* doctrine fell out of favor during the New Deal revolution of the 1930's and was portrayed as being "pro-business" and "anti-labor".

In 1934, the Supreme Court decided *Nebbia v. New York* – stating that there is no constitutionally protected fundamental right to freedom of contract. In 1937, the Court decided *West Coast Hotel Co. v. Parrish*, signaling the end of the *Lochner* era; yet, the effect of the FAA – one of the most inequitable pieces of "pro-business, anti-labor" legislation enacted during the *Lochner* era – has been expanded by powerful corporations and used in pre-dispute labor contracts to strip the working class of their constitutional jury right. Arbitration law by its nature automatically circumvents the Article III requirements of life-tenure and salary protection, and denies the individual citizen's jury right before a controversy is even filed. See J. Story, Commentaries On The Constitution Of The U. S. 1757 (1833) regarding the 7th Amendment:

> "[I]t is a most important and valuable amendment, and places upon the high ground of constitutional right the inestimable privilege of a trial by jury in civil cases, ... which is conceded by all to be essential to political and civil liberty." *Id.* at 1762. "All courts shall be open, and

every person for an injury done him, in his lands, goods, person or reputation, shall have remedy by due course of law." Tex. Const. Art. I. Sec. 13. "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." U.S. Const. 7th Amendment.

28 U.S.C. §§157(a) and 1334(b) Are Unconstitutional In That They Authorize The Federal District Judge To Automatically Funnel Title 11 Petitions Of The Bankrupt, The Poor, And Discharged Citizens To A Non-Article III Judge Before Petitioners May Reach The Consent Clause In That Statute

The Respondents insist that "the District Court properly refused to withdraw the reference of the bankruptcy case"; however, the issue is that the statute authorized the referral in the first instance *without* the Petitioners' consent; in a second instance gave authority to *order* the Martins (as former debtors) back to the bankruptcy judge *without* the Martins' consent; and in a third instance was used to deny the Martins' §157(d) motion.

On March 7, 2005, the federal district judge denied the Martins' pleadings opposing referral of James Studensky's Rule 9019 "Compromise of the Controversy" motion to the bankruptcy judge *without Petitioners' consent*. (See Pet. Writ App. G):

> "It is further ORDERED that the Bankruptcy Court may proceed with a hearing on Trustee's Motion to Compromise Controversy with Sanderson Farms, Inc."

In other words, district judges are authorized under 28 U.S.C. §157(a) and 28 U.S.C. § 1334(b) to automatically refer motions invoking Title 11 to a bankruptcy judge before the consent requirements under §157 are even reached. In its April 23, 2005 order (denying Petitioners'

28 U.S.C. §157(d) motion and stay motion), the district court stated:

> "Appellants' attempted interlocutory appeal was properly dismissed, this Court properly denied any attempt to stay proceedings in the Bankruptcy Court, and there is no legal basis for withdrawing the reference from the Bankruptcy Court." *See* Writ App. F.

In contradiction to the 1st Amendment, all Title 11 Petitioners are *automatically* denied access to district judges (pursuant to 28 U.S.C. §157(a) and §1334(b)) – effectively denying the right to give consent *before* referral of individual proceedings in their case. *See* 28 U.S.C. §§157(c)(2) and (e)). Then, to "get out" of the bankruptcy court, petitioners (even post-discharge citizens) must file under §157(d) for consent from the district court. In this instant case, Petitioners' 28 U.S.C. §157(d) motion was denied and the 5th Circuit failed to review the appeal of this District Court order. An interlocutory appeal is not a viable remedy (*see* §158a) because it presumes that the Petitioner gave consent under §157(c)(2) and (e) before the referral of individual motions to the bankruptcy judge. In this instant case, the Martins loudly objected to the referral of Rule 9019 motions filed by Mr. Studensky more than a year after discharge – where Rule 9019 only authorizes a Trustee (*not* a former Trustee of a discharged bankruptcy estate) to file a motion regarding a compromise made by the parties to active bankruptcy litigation. *See* Bankruptcy Rule 9019.

The facts of this case are proof positive that billion dollar poultry corporations and poultry lenders hold great influence over non-Article III judges – leaving the farmer with no remedy, no jury right, and no access to an impartial, independent forum. Petitioners' Supplement dated August 1, 2007 shows recent new bankruptcy action bearing on this case. SFI continues to argue against the fact of the existence of the 1998 pre-construction investment

Contract, stating, "There was no 1998 pre-construction investment contract among the Martins, Sanderson Farms, and the Bank." (SFI response p. 5). This argument contradicts facts in all the lower courts' findings. *See e.g.* the Fifth Circuit's opinion in Writ page 2a:

> "This potential cause of action arose from a *series* of agreements between Sanderson and Farmers State for the Martins to construct egg hatching barns for Sanderson with financing from Farmers State and for Susan Martin to work as a hatching egg producer."

The SFI argument against the facts is self-serving and an obvious attempt to cover the evidence of an unjust and devastating "bait and switch" labor scheme that leaves the laborer unpaid and undercuts the beef and pork industry.[5] The 1998 investment Contract and express letters offering the consideration are dated in 1998, are on Sanderson Farms, Inc. letterhead, itemize specific annual expenses totaling $26,700, an annual debt repayment of 58,000, a bank loan of $450,000 @ 8.5%-9% with a 15-year term, an annual "net income before tax" of 36,890, and a statement that "the value of litter as fertilizer and cattle feed may add $3,000 to $6,000 to annual returns."[6]

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[5] "Is it fair to command one man to surrender his constitutional rights, if they are his constitutional rights, in order to prevent another" man's crime from being exposed? Judge Richard T. Rives at hearing in bus boycott case of *Browder v. Gayle*, 142 F. Supp. 707 (M..D.Ala, 1956).

[6] SFI persistently describes the 1998 Contract – that gave them benefit of poultry barns built and equipped to SFI custom specs – as "*a marketing brochure only – it was not a contract.*" These same documents (admitted into evidence on Nov. 3, 2004 along with copies of the federal guarantees) promise "*a fair and profitable return on investment.*" *See* 8/1/07 Supplement, pg. 30a and 33a. The SFI *pro hac vice* attorney (though not admitted to practice until November 9, 2004) attended the November 3rd hearing and objected to the admittance of this evidence. The attorney seeks to sanction the Petitioners for arguing the admitted evidence of the 1998 Contract that is objectionable to SFI.

SFI and the Bank were both listed on the Petitioners' "creditor matrix", and were non-claimants of the bankruptcy estate. Debt related to the 1998 investment Contract (including the promise of investment income in return for custom barn construction) was also scheduled, and was never delinquent. The private potential causes of action were noticed on the bankruptcy petition, and the Trustee never "ripened" them. By its terms, Bankruptcy Rule 9019 does not even grant a Trustee authority to negotiate any compromise. There was no underlying adversarial proceeding and thus no active "claims" against SFI or the Bank on file during bankruptcy.

Petitioners under Title 11 and discharged citizens are denied access to Article III judges for vindication of egregious wrongs committed against them.[7] Access to independent judges is blocked by statute and State Constitution – allowing powerful influences to continue unfettered to ravage the bankrupt, poor, and discharged citizens. Where is the justice in that?

CONCLUSION

For the foregoing reasons and argument, and for the reasons and argument set forth in Petitioner's August 1, 2007 supplement and in the Petition For Writ, this Court should grant certiorari.

Respectfully submitted,

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[7] In the words of Felix Frankfurter, federal courts are the nation's "primary and powerful reliances for vindicating every right given by the Constitution, the laws, and the treaties of the United States." Frankfurter and Landis, "Business of the Supreme Court" (1927, p 65).